

Mr. MOAKLEY. Mr. Speaker, House Resolution 535 makes it in order to move to take H.R. 2977 from the Speaker's table with the Senate amendment and concur in the Senate amendment. The motion is to be debatable for up to 1 hour and the debate is equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce.

Mr. Speaker, House Resolution 535 provides a procedural mechanism to speed up the final consideration of the Public Telecommunications Act of 1992. It permits the House to move to adopt the Senate amendments and send the bill to the President without having to go to conference. The House passed this bill last November under suspension of the rules and the Senate recently passed it, with amendments, by a vote of 84 to 11.

Briefly, this bill authorizes a modest increase in funding for the next 3 years for public broadcasting. It also contains provisions to improve the efficiency and the accountability of the board; increase public broadcasting services to underserved audiences—including the visually and hearing impaired; prohibit the broadcasting of indecent programming; and promote affordable training programs for employees at public broadcast stations.

Mr. Speaker, the public broadcasting system provides many educational and cultural benefits to the American people. Its mission, which began 23 years ago, has more than fulfilled its promise to promote education, community awareness and technological innovation. I urge passage of the rule and the bill so that we may continue to fulfill our long-standing commitment to national public radio and television.

Mr. Speaker, I reserve the balance of my time.

Mr. QUILLLEN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. QUILLLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLLEN. Mr. Speaker, the chairman of the committee, Mr. MOAKLEY, has fully explained the provisions of this rule.

This is important legislation whose purpose is to authorize appropriations for public broadcasting. The Corporation for Public Broadcasting is currently authorized through fiscal year 1993 under 2-year advance reauthorizations. This legislation would reauthorize the Corporation for fiscal years 1994 through 1996.

Mr. Speaker, the Government provides public broadcasting with about 17 percent of its total funding, and the remainder comes from State and local governments, corporate underwriting, individual contributions, colleges, and other sources. In addition to providing funding for Corporation for Public Broadcasting Program activities, the bill would authorize \$42 million for each of the 3 years for capital investments in public television and radio facilities. It would also make changes to

the Board of Directors, reducing the number of from 10 to 9 to avoid tie votes. Board members' would be staggered so that three terms expire every 3 years.

Mr. Speaker, the Senate made a number of changes to our bill. In lieu of going to conference, the rule provides that the House will vote on a motion to concur in the Senate amendment and pass the bill. I urge the adoption of the rule.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### REPORT ON SITUATION IN SARAJEVO

(Mr. MURTHA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MURTHA. Mr. Speaker, I would like to give the House a report of my trip to Sarajevo over the weekend. I left at 2 o'clock on Friday and flew into Rhein Main and then got on a C-130 and flew into Sarajevo.

The fighting the day before was intense. When I got there it had let up, even though you could hear mortar rounds and sniper fire in the distance. As a matter of fact, the bus holding the children that was attacked the day we were there went by us, and they inadvertently, or on purpose, hit these small children.

The important point about what is going on is that they can close the airport at any time. It would be impossible for us to keep it open without a substantial force. As a matter of fact, I think any possibility of military intervention on a small scale would be counterproductive.

The hills around Sarajevo remind me of Beirut. It is not like the desert where it is open. Our particular weapons which are so effective in an open territory would be almost impossible for us to get to positions that are covered by foliage and that are hidden in the area.

The United Nations is doing a phenomenal job in feeding the people. We have just enough airplanes going in every day to feed the people there. As a matter of fact, they have 3 days supply of food in Sarajevo, which is only a minor part of the overall refugee problem.

I am convinced that we have to allow the European Community to take the lead, that we have to do it under the United Nations, and any unilateral action by the United States would be a mistake. For us to intervene militarily would take massive U.S. forces, and my recommendation to the President

would be to let the Europeans handle it and to let this thing be settled under the United Nations.

Mr. Speaker, it is a tragic situation. All of us feel badly about it. I visited a refugee center where an old fellow, 83 years old, said he was a child in World War I, and that was terrible; he was in World War II and it was a tragic situation; and this is worse.

They are forcing people out of their homes. You can see the houses that have been destroyed by the mortar and artillery fire. Of course, there are no windows in any of the homes surrounding the airport at Sarajevo, and I assume that is true of any place that has been attacked in Bosnia.

We have got a real problem facing us with winter coming on, with nobody having any opportunity to be warm at all. Of course, the weather would keep food from being distributed.

So I can only say that it is a tough situation, but the Europeans have to take more of a lead, and, of course, the United Nations has to advise us on what we should do. But I certainly would be against any massive military intervention by the United States in that area.

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#### TELECOMMUNICATIONS ACT OF 1992

Mr. DINGELL. Mr. Speaker, pursuant to House Resolution 535, I offer a motion.

The Clerk read as follows:

Mr. DINGELL moves to take from the Speaker's table the bill H.R. 2977, to authorize appropriations for public broadcasting, and for other purposes, with the Senate amendment thereto, and to concur in the Senate amendment.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to House Resolution 535, the gentleman from Michigan [Mr. DINGELL] will be recognized for 30 minutes, and the gentleman from New Jersey [Mr. RINALDO] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I yield myself 5 minutes. Mr. Speaker, I rise in support of the motion to concur in the Senate amendment to H.R. 2977, and to urge my colleagues to do likewise. Although I have reservations about several of the provisions added by the Senate, which I will address later, on balance I believe that the amendments should be accepted by this body so that the legislation can proceed to the President for his signature.

I should note that our colleague, the Honorable ED MARKEY, the able chairman of the committee's Subcommittee on Telecommunications and Finance, is unable to be with us today. I ask unanimous consent that his statement be inserted into the RECORD at this point, and very much regret his absence.

Mr. Speaker, last November, the House passed its version of H.R. 2977.

authorizing appropriations for the Corporation for Public Broadcasting, and for other purposes. CPB is the private corporation that was created by the Congress to implement the provisions of the Public Broadcasting Act more than 20 years ago.

By any measure, CPB has done a magnificent job. Today, public television and radio bring programming material to millions of Americans—from educational programming for children to news and public affairs programming. Both public television and public radio add to the diversity of programming that is available to the American people, and help to ensure that all Americans have access to high quality, informative programming that otherwise would not be available to them.

As amended by the Senate, H.R. 2977 authorizes \$310 million for fiscal year 1994, \$375 million for fiscal year 1995, and \$425 million for fiscal year 1996. While ultimately it may not be possible for Congress to provide funds at these levels, in my view these figures represent responsible authorization levels. Both public television and radio are partners in our national effort to improve America's education. Public broadcasting has the potential to contribute much more—but only if adequate resources are made available.

I would like to address several of the amendments that were added to H.R. 2977 by the other body.

The first is the so-called objectivity and balance amendment that was a manager's amendment offered by the chairman of the Senate's Communications Subcommittee, Senator INOUYE. Although the amendment mandates new procedural requirements, it most certainly does not establish new policy. Recipients of Federal funds for public broadcasting have always been held accountable for the funds that they receive; this provision does not change that requirement in any manner. Specifically, the amendment does not expand the Corporation's authority with regard to objectivity and balance as that authority has been interpreted by the courts, including the U.S. Court of Appeals for the District of Columbia Circuit in *Accuracy in Media, Inc. v. FCC.*, 521 F. 2d 288, (D.C. Cir. 1975), cert. denied, 425 U.S. 934 (1976).

Rather, the amendment requires CPB to establish new procedures that will facilitate public broadcasting's accountability to Congress and to the American people. The amendment requires that Corporation to review its current efforts to meet the responsibilities outlined in section 396(g)(1)(A) of the Communications Act—including adherence to objectivity and balance in programs of a controversial nature—to solicit the views of the public on the services provided by public broadcasters, and to review national programming to determine whether it meets congressional mandates. On the basis of the information gathered above, it can act to address any discov-

ered imbalances or unmet needs through program grants made pursuant to clauses (ii)(II), (iii)(II), and (iii)(III) of section 396(k)(3)(A) of the act and through dissemination of information on identified concerns throughout the public broadcasting system.

Moreover, the terms of this amendment do not have any bearing on the Corporation's awarding of community service grants to public television and radio stations pursuant to clauses (ii)(I) and (iii)(I) of section 396(k)(3)(A) of the Communications Act. This amendment neither enhances nor diminishes the Corporation's existing authority with respect to its awarding of CSG's to public television and radio stations.

While the amendment refers to national program production and acquisition grants [NPPAG's], it does not authorize the Corporation to impose restrictions or conditions on the use or expenditure of NPPAG grants different from the types it currently imposes. For example, CPB cannot tell a public station what programming it must produce or acquire; it cannot require that stations pool funds at the national level for the production of programming that the Corporation's Board determines should be produced; it cannot require that, as a condition for receiving the NPPAG grant, the station provide a particular program or type of program, and most importantly, it cannot require that a station broadcast any program or prohibit the broadcast of any program.

Rather, the Corporation may provide information, engage in discussions with stations, and advise stations, based on the Board's review of national public broadcasting programming and its analysis of public comment, as to areas of national programming that stations may consider for special emphasis.

Neither Congress nor CPB can substitute their own judgment for that of local radio and television licensees who must ultimately decide on the mix of programming that best meets the needs and interests of the communities. Those licensees are held accountable by the Federal Communications Commission during the course of renewing their licenses, and nothing in this amendment should be permitted to interfere with the discretion of those licensees as they discharge their obligations and responsibilities to the communities they were licensed to serve.

The second Senate-passed amendment that I would like to address is the so-called Byrd amendment. This amendment, which was added to the bill on the Senate floor by an overwhelming majority, prohibits indecent programming on most commercial and public radio and television stations between the hours of 6 a.m. and 12 midnight.

Now I understand the sentiments that led to the adoption of this amendment. Some of the stuff that is on commercial radio is, quite simply, appall-

ing. Much of the material that appears on television is no better. I wish we had at our disposal a constitutional mechanism that would protect our children from programming material of this type.

But the Byrd amendment is clearly unconstitutional. The courts have spoken. The adoption of this amendment simply repeats the action of the Congress in 1968, when the Helms amendment was added to an appropriations bill. That amendment, which imposed a 24-hour-a-day ban on indecent speech, was overturned by the court in *Action for Children's Television v. FCC.*, 932 F.2d 1504 (D.C. Cir. 1991) cert. denied, 112 S. Ct. 1281 (1992). I insert the entire text of this decision into the RBOORB at this point.

[U.S. Court of Appeals for the District of Columbia Circuit, No. 88-1916]

**ACTION FOR CHILDREN'S TELEVISION, et al., PETITIONERS v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS; CHILDREN'S LEGAL FOUNDATION, et al., INTERVENORS**

Argued January 28, 1991.

Decided May 17, 1991.

Timothy B. Dyk for Capital Cities/ABC, Inc., and CBS, Inc., with whom Henry Geller and Donna Lampert, for Action for Children's Television, John A. Powell and C. Edwin Baker, for American Civil Liberties Union, James Popham, for Association of Independent Television Stations, Inc., Steven A. Lerman, Dennis P. Corbett and Laura B. Humphries, for Infinity Broadcasting Corporation, Frits E. Attaway, for Motion Picture Association of America, Inc., Henry L. Baumann and Stephen A. Bookbinder, for National Association of Broadcasters, Howard Morderer, for National Broadcasting Company, Inc., Theodore A. Miles and Karen Christensen, for National Public Radio, Andrew Jay Schwartzman and Jan G. Levine, for People for the American Way, Jonathan D. Blake, for Post-Newsweek Stations, Inc., Paula A. Jameson and Nancy H. Hendry, for Public Broadcasting Service, J. Laurent Soharff, for Radio-Television News Directors Association, Jane E. Kirtley, for The Reporters Committee for Freedom of the Press, and Bruce W. Sanford, for Society of Professional Journalists were on the joint brief, for petitioners Action for Children's Television, et al. Molly Pauker, for National Broadcasting Company, Inc., Lois Schiffer, for National Public Radio, Martin Wald and Janet E. Milne, for Post-Newsweek Stations, Inc., and James M. Smith, for Radio-Television News Directors Association, also entered appearances for petitioners.

Eric M. Lieberman, with whom John Crigler, William J. Byrnes, and Edward de Gracia were on the brief, for petitioner The Pacific Foundation and Interveners PFN American Center, Allen Ginsberg, et al.

Robert L. Pettit, General Counsel, Federal Communications Commission, with whom Daniel M. Armstrong, Associate General Counsel, Jane E. Mago, Sue Ann Preskill, and Laurence N. Bourne, Counsel, Federal Communications Commission, and Barbara L. Herwig and Jacob M. Lewis, Attorneys, Department of Justice, were on the brief, for respondents.

James P. Mueller, for Children's Legal Foundation and American Family Association, Peggy M. Coleman, for American Family Association, and Paul J. McGeady, for Morality in Media, Inc., were on the joint brief, for intervenors and amicus curiae.

Bruce A. Taylor and Benjamin W. Bull entered an appearance for intervenor Children's Legal Foundation, et al.

Before: Mikva, Chief Judge, Edwards and Thomas, Circuit Judges.

Opinion for the Court filed by Chief Judge Mikva.

Mikva, Chief Judge: This case presents constitutional challenges to a Federal Communications Commission ("FCC" or "the Commission") order, promulgated at the direction of Congress, barring all radio and television broadcasts of "indecent" material. We believe that the disposition of this case is governed by our prior decision in *Action for Children's Television v. Federal Communications Commission*, 852 F.2d 1532 (D.C. Cir. 1988), in which we rejected vagueness and overbreadth challenges to the Commission's definition of indecency but found that the Commission's curtailment of "safe harbor" broadcast periods impermissibly intruded on constitutionally protected expression interests. Accordingly, we grant the petition for review.

The particulars of this case are best understood within the history of government efforts to regulate the broadcast of indecent material. Since 1927, federal law has prohibited the broadcast of "any obscene, indecent, or profane language." 18 U.S.C. §1464 (1988); see also Radio Act of 1927, §29, 44 Stat. 1172 (1927) (original prohibition against utterance of "obscene, indecent, or profane language"). In 1975, the Commission essayed to "authoritatively construe[]" the term "indecent" and to distinguish it from the modern definition of obscenity, as formulated by the Supreme Court in *Miller v. California*, 413 U.S. 15 (1973). See *Pacific Found.*, 56 F.C.G. 2d 94, 97 (1975). The Commission defined indecency as "language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs," and emphasized that its primary regulatory interest lay in protecting children from "language which most parents regard as inappropriate for them to hear." Id. at 98. The Supreme Court upheld the Commission's finding that a radio station's afternoon broadcast of a George Carlin comedy monologue entitled "Filthy Words" was indecent under section 1464. See *Federal Communications Comm'n v. Pacific Found.*, 438 U.S. 726, 738-41 (1978).

The Commission, by its own account, subsequently "took a very limited approach to enforcing the prohibition against indecent broadcasts." In re *Infinity Broadcasting Corp. of Pennsylvania*, 3 FCC Rod 930 (1987) [hereinafter *Reconsideration Order*]. The Commission essentially restricted its enforcement efforts to material broadcast before 10:00 p.m. that involved "the repeated use, for shock value, of words similar or identical to those satirized in the Carlin 'Filthy Words' monologue." Id. at 930. Between 1975 and 1987, no broadcasts at all were found actionable under this narrow prohibition. See id.

By 1987, however, the Commission had concluded that "the highly restrictive enforcement standard employed after the 1975 *Pacific* decision was unduly narrow as a matter of law and inconsistent with our enforcement responsibilities under Section 1464." Id. Returning to the generic definition of indecency it had developed in *Pacific*, the Commission issued three rulings declaring material that would not have violated the "Filthy Words" test to be indecent. See *Pacific Found.*, 3 FCC Rod 2998 (1987); *The Regents of the Univ. of California*, 3 FCC Rod 3703 (1987); *Infinity Broadcasting Corp. of Pennsylvania*, 3 FCC Rod 3706 (1987); see also *New Indecency Enforcement Standards to be Applied*

to All Broadcast and Amateur Radio Licensees, 3 FCC Rod 3726 (1987) (summarizing Commission policies). Significantly, two of the cited broadcasts had aired after 10:00 p.m., the time period previously identified by the Commission as a "safe harbor" during which the risk of children in the broadcast audience was thought to be minimal. See id. at 3726. On reconsideration, the Commission affirmed its warnings with respect to the three broadcasts and noted, in response to requests for more specific rules regarding time channeling, that 12:00 midnight was its "current thinking" as to when the risk of children in the broadcast audience could reasonably be thought minimized. See *Reconsideration Order*, 3 FCC Rod at 934, 937 n.47.

Reviewing the Commission's order, we first rejected petitioners' vagueness and overbreadth challenges to the Commission's generic definition of indecency. See *Action for Children's Television v. FCC*, 853 F.2d 1532, 1538-40 (D.C. Cir. 1988) [hereinafter *ACT I*]. However, we vacated the Commission's rulings that the two post-10:00 p.m. broadcasts were indecent. In addition to calling the Commission's findings "more ritual than real" and its underlying evidence "insubstantial," id. at 1541-42, we opined that a "reasonable safe harbor rule" was constitutionally mandated. Id. at 1543 n.18. Accordingly, we instructed the Commission to determine on remand, "after a full and fair hearing, . . . the times at which indecent material may be broadcast." Id. at 1544.

Before the Commission could carry out this court's mandate, Congress intervened. On October 1, 1988, two months after the *ACT I* decision issued, the President signed into law a 1989 appropriations bill containing the following rider:

"By January 31, 1990, the Federal Communications Commission shall promulgate regulations in accordance with section 1464, title 18, United States Code, to enforce the provisions of such section on a 24 hour per day basis."

Pub. L. No. 100-459, §608, 102 Stat. 2226 (1988) (emphasis added). Concluding that "[t]he directive of the appropriations language affords us no discretion," the Commission promulgated a new rule pursuant to section 1464 prohibiting all broadcast of indecent materials. See *Enforcement of Prohibitions Against Broadcast Obscenity and Indecency in 18 U.S.C. §1464*, 4 FCC Rod 457 (1988) [hereinafter *Order*], codified at 47 CFR §73.3099 (1990) (restrictions on the transmission of obscene or indecent language). The Commission also "abandon[ed] its] plans to initiate a proceeding in response to the concerns raised by" the *ACT I* panel. *Order*, 4 FCC Rod at 457.

A panel of this court granted petitioners' motion to stay enforcement of the ban pending judicial review. See *Action for Children's Television v. FCC*, No. 88-1916 (D.C. Cir. Jan. 23, 1989). Six months later, while briefing on the validity of the Commission's order was underway in this court, the Supreme Court issued an opinion finding a blanket ban on indecent commercial telephone message services unconstitutional. *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 109 S. Ct. 2629 (1989). Believing that *Sable* left open the possibility that indecent broadcasts may be proscribed if the Commission could prove that no less restrictive measure would effectuate the government's compelling interests, the Commission sought and obtained a remand from this court in order to assemble the relevant data supporting a total ban. *Action for Children's Television v. FCC*, No. 88-1916 (D.C. Cir. Sept. 13, 1989) (remanding record to the FCC for a "full and fair hearing on the issue of the propriety of indecent broadcasting").

The Commission subsequently solicited public comments on the validity of a total ban on broadcast indecency. See *Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. §1464*, 4 FCC Rod 8368 (1989). After receiving and reviewing the comments, the Commission issued a comprehensive report concluding that "a 24-hour prohibition on indecent broadcasts comports with the constitutional standard the Supreme Court enunciated in *Sable* for the regulation of constitutionally protected speech." *Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. §1464*, 5 FCC Rod 5297, 5297 (1990). Finding a "reasonable risk that significant numbers of children ages 17 and under listen to radio and view television at all times" without "active" parental supervision, the Commission concluded that no alternative to a total ban would effectuate the government's compelling interest in protecting children from broadcast indecency. See id. at 5297, 5304. Current proceedings before this court followed issuance of the Commission's report.

## II.

Petitioners, an amalgam of broadcasters, industry associations, and public interest groups, present several constitutional challenges to the Commission's action. First, they claim (some more spiritedly than others) that the Commission's definition of indecency is unconstitutionally vague and overbroad. Second, they contend that a total ban on broadcast indecency cannot withstand constitutional scrutiny. We address petitioners' contentions in turn.

### A. Vagueness and overbreadth challenges

Petitioners contend that the Commission's definition of indecency—"language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs," *Order*, 4 FCC Rod at 457—is unconstitutionally vague. A statute or regulation is void for vagueness if it "either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application." *Roberts v. United States Jaycees*, 468 U.S. 609, 620 (1994) (quoting *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926)).

We have already considered and rejected a vagueness challenge to the Commission's definition of indecency. In *ACT I*, we noted that the Supreme Court, entertaining a similar challenge in *Pacific*, had quoted various elements of the definition with approval and had ultimately affirmed the Commission's application of the definition to the broadcast under review. See *ACT I*, 852 F.2d at 1538-39. In our view, the Supreme Court's decision in *Pacific* dispelled any vagueness concerns attending the definition. See id. at 1539 ("[I]f acceptance of the FCC's generic definition of 'indecent' as capable of surviving a vagueness challenge is not implicit in *Pacific*, we have misunderstood Higher Authority and welcome correction."); cf. *Information Providers' Coalition v. FCC*, No. 90-70379, Slip Op. at 2635-37 (9th Cir. March 21, 1991) (rejecting vagueness challenge to similar definition of indecency in dial-a-porn context). Our holding in *ACT I* precludes us from now finding the Commission's generic definition of indecency to be unconstitutionally vague.

Some of the petitioners raise the additional claim that the definition of indecency is unconstitutionally overbroad. They contend that, because the Commission fails to recognize "serious merit" as an absolute defense to a charge of indecency, the definition sweeps even constitutionally protected expression within its ambit. See *Houston v. Hill*, 482 U.S. 451, 459 (1987) (noting that stat-

utes "that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application").

We rejected an identical overbreadth challenge in ACT I. We noted that identical material qualifies for First Amendment protection regardless of merit, but that even material with "significant social value" may have a strong negative impact on children. See *Act I*, 852 F.2d at 1340. We thus found the Commission's method of identifying material suitable for broadcast only during the late night, safe harbor hours—whereby merit is treated as a "relevant factor in determining whether material is patently offensive" but "does not render such material per se not indecent"—to be permissible. See *id.* at 1339-40. Given that our decision today reaffirms the need for safe harbor periods during which indecent material may be broadcast and invalidates the Commission's attempt to ban such broadcasts altogether, we have no reason to revisit ACT I's conclusion that the Commission's generic definition of indecency comports with constitutional overbreadth requirements.

#### B. Challenge to total ban on broadcast indecency

Petitioners' core challenge is to the constitutional validity of a total ban on the broadcast of indecent material. Their contentions are two-fold: First, they claim that, under Supreme Court and circuit precedent, the government may not completely suppress indecent speech in any medium. Second, they argue that even if a total ban could theoretically be justified, the Commission's action here fails to satisfy the strict scrutiny standard recently reaffirmed by the Supreme Court in *Sable*.

We agree with petitioners that circuit precedent compels our rejection today of a total ban on the broadcast of indecent material. In ACT I, we stated that: "Broadcast material that is indecent but not obscene is protected by the first amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what the people say and hear." 852 F.2d at 1344. Addressing the scope of permissible regulation, we explained that: "Content-based restrictions ordinarily 'may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest.'" [citation omitted] The Supreme Court has recognized a government's interest in "safeguarding the physical and psychological well-being of a minor" as "compelling." [citations omitted] But that interest, in the context of speech control, may be served only by carefully-tailored regulation." *Id.* at 1343 n.18.

We found that the Commission's elimination of the post-10:00 p.m. "safe harbor" period failed to satisfy these constitutional standards. Specifically, we concluded that:

"[T]he precision necessary to allow scope for the first amendment shielded freedom and choice of broadcasters and their audiences cannot be accomplished, we believe, unless the FCC adopts a reasonable safe harbor rule."

*Id.* We therefore instructed the Commission, on remand, to "afford broadcasters clear notice of reasonably determined times at which indecent material safely may be aired." *Id.* at 1343.

Our holding in ACT I that the Commission must identify some reasonable period of time during which indecent material may be broadcast necessarily means that the Commission may not ban such broadcasts entirely. The fact that Congress itself mandated the total ban on broadcast indecency does not alter our view that, under ACT I,

such a prohibition cannot withstand constitutional scrutiny. While "we do not ignore" Congress' apparent belief that a total ban on broadcast indecency is constitutional, it is ultimately the judiciary's task, particularly in the First Amendment context, to decide whether Congress has violated the Constitution. See *Sable*, 109 S. Ct. at 2838. Moreover, we note that introduction of the appropriations rider preceded issuance of our decision in ACT I; thus, the relevant congressional debate occurred without the benefit of our constitutional holding in that case. See 134 CONG. REC. S9911-S9915 (daily ed. July 28, 1988).

Nothing else in the intervening thirty-four months has reduced the precedential force of ACT I. Indeed, the Supreme Court's decision in *Sable*, striking down a total ban on indecent commercial telephone messages, affirmed the protected status of indecent speech and reiterated the strict constitutional standard that government efforts to regulate the content of speech must satisfy. See *Sable*, 109 S. Ct. at 2836 (noting that "[s]exual expression which is indecent but not obscene is protected by the First Amendment," and stating that the government may "regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest"). See also *Consolidated Edison Co. v. Public Serv. Comm'n.*, 447 U.S. 530, 540 (1980). Even the Commission, prior to congressional enactment of the appropriations rider, shared this view. See *Reconsideration Order*, 3 FCC Rod at 931 (dismissing suggestion that section 1464 should be read to totally prohibit the broadcast of indecent material, as such a reading would "run afoul of [the] constitutional premise" that the Commission "may only do that which is necessary to restrict children's access to indecent broadcasts" and "may not go further so as to preclude access by adults who are interested in seeing or hearing such material").

Thus, neither the Commission's action prohibiting the broadcast of indecent material, nor the congressional mandate that prompted it, can pass constitutional muster under the law of this circuit.

#### III.

We appreciate the Commission's constraints in responding to the appropriations rider. It would be unseemly for a regulatory agency to throw down the gauntlet, even a gauntlet grounded on the Constitution, to Congress. But just as the FCC may not ignore the dictates of the legislative branch, neither may the judiciary ignore its independent duty to check the constitutional excesses of Congress. We hold that Congress' action here cannot preclude the Commission from creating a safe harbor exception to its regulation of indecent broadcasts.

Our decision today effectively returns the Commission to the position it briefly occupied after ACT I and prior to congressional adoption of the appropriations rider. The Commission should resume its "plans to initiate a proceeding in response to the concerns raised" in ACT I, which it "abandon[ed]" following Congress' mandate. *Order*, 4 FCC Rod at 467. We direct the Commission, in "re-determin[ing]" after a full and fair hearing, "the times at which indecent material may be broadcast," to carefully review and address the specific concerns we raised in ACT I: among them, the appropriate definitions of "children" and "reasonable risk" for channeling purposes, the paucity of station- or program-specific audience data expressed as a percentage of the relevant age group population, and the scope of the government's interest in regu-

lating indecent broadcasts. See *ACT I*, 852 F.2d at 1341-44.

For the foregoing reasons, the petition for review is granted, the order under review is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. SPEAKER, I am a realist. If we were to have a separate vote on this amendment, the outcome would be obvious: After all, it is August of an election year, and no one wants to go on record as supporting indecent programming.

The sad fact is that the Byrd amendment will not rid our Nation's airwaves of indecent programming. The courts have seen to that. What the Byrd amendment will do is force the FCC to undertake a lengthy rulemaking proceeding, at taxpayer expense, that is preordained to fail. While I suppose there are certain benefits that accrue to Members of the House and Senate by forcing the agency down this path, we should all be cognizant of the cost and likely outcome.

Mr. SPEAKER, at this point I would like to insert the text of a letter that I received from the American Civil Liberties Union (ACLU) regarding the Byrd amendment. While I am not a member of that association and do not always support its positions, in this case the ACLU analysis is right on point.

#### AMERICAN CIVIL LIBERTIES UNION,

Washington, June 12, 1992.

DEAR REPRESENTATIVE: In approving S. 1504, the Public Telecommunications Act, last week, the Senate added an amendment that would prohibit indecent programming on most commercial and public radio and television stations from 6 a.m. to 12 midnight. The amended bill will soon be considered in the House, perhaps as early as Monday. The American Civil Liberties Union urges that this amendment, which violates the First Amendment's guarantees of freedom of speech, be deleted from the bill, as it effectively deprives adults of access to constitutionally protected materials.

Congress has a responsibility not to enact unconstitutional legislation, and this provision is unconstitutional. The Supreme Court has unambiguously declared that "[s]exual expression which is indecent but not obscene is protected by the First Amendment." *Sable Communications v. FCC*, 492 U.S. 115, 126 (1989). Moreover, government cannot restrict access to protected expressive materials under a child-protection theory because "the result is to reduce the adult population . . . to reading what is fit for children." *Id.* at 128, quoting *Butler v. Michigan*, 352 U.S. 310, 383 (1957). The Senate's proposed safe-harbor rule would limit more adult programming to the hours of midnight to 6 a.m., putting the broadcasts off limits to children and most adults alike.

In reviewing a similar restriction on the hours during which indecent programming may be broadcast, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Constitution mandates "reasonable safe harbor rules." *Action for Children's Television v. FCC*, 652 F.2d 1332, 1343 n.18 (D.C. Cir. 1988). Such reasonableness must include "due respect for the high value our Constitution places on freedom and choice in what the people say and hear." *Id.* at 1344. To be constitutional, such a rule "would give effect to the government's interest in promoting pa-

rental supervision of children's listening, without intruding excessively upon the licensee's range of discretion of the fare available for mature audiences and even children whose parents do not wish them sheltered from indecent speech." Id.

By extending the prohibition on indecent programming to midnight, the Senate bill violates these principles by restricting what may be broadcast to hours when most viewers and listeners are asleep and effectively denies adults access to constitutionally protected material. The restriction should be abandoned.

Sincerely,

ROBERT S. PECK,  
Legislative Counsel.

Mr. Speaker, the Senate's acceptance of the Byrd amendment is unfortunate. But it constitutes only a small portion of the bill before us, H.R. 2977. The proper course for the House to follow is to concur in the Senate amendment to H.R. 2977 and clear the bill for the President's signature. I urge my colleagues to join me in supporting this motion and help to ensure that public television and public radio can continue to serve the American public in a manner that informs, enlightens, and entertains them.

Mr. Speaker, I reserve the balance of my time.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the motion to concur in the Senate amendment to H.R. 2977. Last November, this House passed H.R. 2977, the Public Telecommunications Act, with a showing of strong bipartisan support.

Like the House bill, the Senate amendment addresses the authorization levels for the Corporation for Public Broadcasting for fiscal years 1994 through 1996. The Senate amendment authorizes the Corporation at \$310 million for fiscal year 1994, \$375 million for fiscal year 1995, and \$425 million for fiscal year 1996.

I am pleased at the assurances made to the Congress by the Corporation that a significant portion of the appropriated funds will be directed toward educational programs and services, as well as the expansion of radio services.

When the Corporation was first created, Congress specified that the public broadcasting system must receive no more than 40 percent of its money from the Federal Government. In fact, today, our contribution amounts to only 15 percent of its operating expenses.

Most importantly the Senate amendment includes a number of administrative checks to ensure that the Corporation acts in the best interests of its national audience and is accountable for the use of Federal funds. It requires the Corporation to adhere to its statutory objectivity and balance mandate in the distribution of programming grants and report to Congress on its effort to carry out the mandate.

The Senate amendment further requires federally funded programs to be disclosed to the public; it requires the corporation to maintain a public file containing information concerning na-

tional programming; and it requires the independent television service [ITVS] to award its production grants on a geographically diverse basis. Finally, the Senate amendment also seeks to improve the quality of programming on both public and commercial television.

Mr. Speaker, I believe that the Public Telecommunications Act will enable the system to fulfill its commitment to providing much-needed educational and radio expansion services.

Accordingly, I urge my colleagues to support the motion to concur in the Senate amendment.

Mr. Speaker, I reserve the balance of my time.

□ 1300

Mr. DINGELL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Alabama [Mr. HARRIS].

Mr. HARRIS. Mr. Speaker, I am pleased to rise in support of this bill to provide funding for the Corporation for Public Broadcasting and the Public Telecommunications Facilities Program.

Our public broadcasting network provides the American viewing and listening public with diverse and innovative noncommercial programming of the highest quality.

I am particularly interested in the way that public broadcasting is finding new and exciting ways to make telecommunications technology work for us, especially in bringing educational programming to the classrooms of rural America. Educators seem to be among the biggest fans of public television, probably because they have seen first hand this medium's potential.

Last year, Ms. Pam Montgomery from my home State was named a "Teacher of the Year" by President Bush. When I met with Ms. Montgomery after she received her award, she told me that she believed part of her success as a teacher came from the effective use of educational TV in her classroom.

After seeing a videotape of Mrs. Paula Malcolm using "Reading Rainbow" in her classroom at Hill Elementary School in Munford, AL, I have become a believer.

The education potential of public broadcasting is not limited to the formal classroom. As part of the annual Sakura Festival in Tuscaloosa, AL, this spring, children had a chance to learn about the Japanese tradition of kite-building at the children's hands-on museum by watching a "3-2-1 Contact" show on the subject.

These kids learned aerodynamics, Japanese folk culture, and created a kite which is a work of art and now hangs in a place of honor in the lobby of the museum.

Jane Ingram, director of programs of the Children's Hands on Museum, credits Alabama public television's educational services coordinator for making the program available.

Alabama public television has a long-standing commitment to education. I should note that the executive director of APT, Judy Stone, has just been elected to the board of directors of PBS and I am expecting great things from her.

In addition to the services which I just mentioned, APT delivers to the 1.5 million households in Alabama GED exam preparation programs, the learn to read literacy program, and coverage of issues of unique interest to us.

Many of you will remember the exclusive interview of President Jimmy Carter that was produced by the news and public affairs division of APT and which aired on 200 public television stations.

I am particularly pleased to see that the PTFP is reauthorized. It seems to me that as we place greater and greater faith in public broadcasting as an effective tool to help educate the American public with innovative programming, we should provide this medium with adequate infrastructure support.

There are still many rural areas in this country that are not served by public radio and TV and public broadcasting systems that need funds to expand their services and modernize their equipment. Unfortunately, the self-styled "Education President" seroed out this important program and it was left to this Congress to restore its funding.

The bottom line seems to be that investing in our public broadcasting network is one of the most cost-effective methods of ensuring continued educational and informational services to all of our constituents.

Again, I strongly support this bill and I urge my colleagues to do likewise.

Mr. RINALDO. Mr. Speaker, I yield 6 minutes to the gentleman from Pennsylvania [Mr. RITTER], a member of the Committee on Energy and Commerce.

Mr. RITTER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I want to commend the chairman of the full Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL]; the chairman of the Subcommittee on Telecommunications and Finance, [Mr. MARKEY]; the ranking Republican of the Committee on Energy and Commerce, the gentleman from New York [Mr. LEWT]; and the ranking Republican on the Subcommittee on Telecommunications and Finance, the gentleman from New Jersey [Mr. RINALDO], for their work on this issue.

Mr. Speaker, when I stood in the well to address the House on this legislation in November, I expressed some concern as to the objectivity and the balance of some of the programming aired over our public television stations.

I continue to consider objectivity and balance to be the standard by which our public television stations should govern themselves. I am happy to note that this bill, as amended by the Senate, contains the objectivity and bal-

ance provisions for which I have long argued.

I think, Mr. Speaker, this is a much improved bill. The Corporation for Public Broadcasting, through its funding of programming by the Public Broadcasting Service, continues to provide the country with a great variety of entertainment and educational programming. CPB is also at the forefront of technological innovations in merging video presentation and education efforts. They are to be commended.

Let there be no mistake about it. I am a fan of public broadcasting; I am not out to kill "Big Bird." But let us also make no mistake about the fact the concerns I raised were legitimate and deserving of the solution proposed in this bill.

In my opinion, PBS has become too centralized, making programming decisions which serve a very diverse American public without enough input from that viewing public. I firmly believe that input from member stations to PBS central is critical in interpreting and serving the viewing needs of the American consumer. I would like to see, and many of my colleagues would like to see, more of that kind of input.

For example, when PBS distributed shows like "After the Warming," "Global Change," and others that showed public television viewers the alarmist side of global warming, there was not anything on the other side of that coin. "The Greenhouse Conspiracy," which was a critically acclaimed documentary that uses science to virtually take apart a good deal of this alarmist global warming theory, and theories that were the basis for a lot of the PBS programs, was not shown. The reason given was a lack of production values.

Individual stations were forced to procure this program and the balance it represented, if they could, if they could afford it, by themselves.

Science is useful to the extent it constitutes a search for objective truth. Certainly programming on science-based issues should reflect the debate, if there is one, in a scientific community, but it must be based, as all science is, on the isolation of some objective and verifiable fact, not simply the rhetoric of political interest groups, and not the purported facts that they cite for otherwise unsupported positions.

That is when we need objectivity and balance, when there is significant debate over a particular subject.

Mr. Speaker, I want to commend Mr. Bruce Christensen, the president of PBS, for his willingness to engage in what I believe is helpful dialogue with the Congress over this issue and similar ones.

In authorizing the Corporation for Public Broadcasting, Congress mandated that CPB was to "facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are ob-

tained from diverse sources, will be made available to public telecommunications entities with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature."

The Senate amendment before us today provides the way through which those goals can be enforced without the unintended intrusion of Government censorship. The Senate amendment requires that CPB annually report to Congress every organization receiving a grant from CPB, including all programs produced under such grants. The Senate amendment also requires the newly formed independent production service, the independent television service [ITVS], to make annual reports as to its program funding, in order to ensure that programming produced with Federal funds reaches the audience it is intended to reach, and in a manner which maximizes the benefits to that audience.

The Senate amendment further requires CPB to actively expand its efforts to provide objectivity and balance in programming and to report to Congress on these efforts.

Clearly one of the benefits of public broadcasting is its ability to provide objective public affairs programming, offer in-depth coverage and analysis and, to a very large extent, it is successful in doing it. These amendments do not require that specific programs be funded or aired according to a specific schedule, but these amendments are valuable because they require CPB and PBS to focus on balance and objectivity.

Again, this is an improved bill. I am pleased to support it. I urge my colleagues to do the same.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from California [Mr. BEILENSEN].

(Mr. BEILENSEN asked and was given permission to revise and extend his remarks.)

Mr. BEILENSEN. Mr. Speaker, I rise in strong support of H.R. 2977, the bill authorizing reauthorization for public broadcasting.

Mr. Speaker, I rise in strong support of H.R. 2977, the bill reauthorizing the Corporation for Public Broadcasting. Eight months ago, the House of Representatives approved legislation to fund the CPB, which supports noncommercial radio and television services. Now that the Senate has worked its will, I hope we can move this bill forward quickly.

Mr. Speaker, I firmly believe the system we have developed that includes space on the public airwaves for noncommercial, educational uses of television and radio has succeeded and that we should do everything we can to preserve it.

Too many of my constituents have told me how disturbed they are by the quantity and quality of violence on commercial television. I share that concern and was moved by the words of Mr. Newton Minow, a former chairman of the Federal Communications Commission, when he said:

In 1961, I worried that my children would not benefit much from television. But in 1991, I worry that my grandchildren will actually be harmed by it.

He pointed out that the programming on public television has been the answer to that worry, as it struggles to provide outstanding public service while remaining in the role of a perpetual beggar in the richest country in the world.

Mr. Bruce Christensen, the president of the Public Broadcasting Service, has also made the case for public broadcasting very eloquently, calling the public airwaves a:

National resource like \* \* \* public lands. Multiple use of that resource requires public policies that take into account the need for commercial development as well as reserve part of our communications spectrum for public uses just as we preserve national forests and parks.

Mr. Speaker, I ask that my colleagues give H.R. 2977 and public broadcasting their support. I am inserting Mr. Christensen's speech into the RECORD so that my colleagues will have the benefit of his remarks.

#### THE CASE FOR PUBLIC TELEVISION

[Remarks of Bruce L. Christensen, President, Public Broadcasting Service (PBS)]

Thank you Gil and your National Press Club colleagues for inviting me to speak to you this afternoon. It's a pleasure to be here with so many friends and colleagues.

This has been a particularly trying time for those of us who work in public broadcasting. One of my public television colleagues put it this way, "When you're doing the Lord's work, you don't expect to get the hell beaten out of you."

This statement should tell you two things about those of us who work in this institution. First, we are a self-righteous crowd who believe that what we are doing is essential to democracy itself. And second, we are constantly surprised when our assumed virtues turn out to be someone else's blackest sins.

The journalist in the audience should certainly recognize and perhaps even empathize with this experience.

The institution of public television has taken upon itself the responsibility to be E. B. White's definition of a "saving radiance in the sky." Its driving force is public service. It exists to provide a public good to the citizens of this nation.

That's pretty highfalutin stuff. Where do we in public television get that notion?

Like Tevye's response in "Fiddler on the Roof," the idea comes from tradition! And, I might say, it comes from practice.

Public broadcasting pioneers petitioned the FCC in the early fifties for space to be reserved on the public's airwaves for non-commercial, educational uses of television and radio. They succeeded in making the case that, although commercial broadcasting was important, it should not be the only use of the public's airwaves.

These pioneers argued that the only way to adequately care for the public interest in broadcasting was to create a separate non-commercial system of television and radio stations that had education rather than commercial profit as its bottom line.

Their case was based on the premise that commercial broadcasting could not adequately serve two masters—profit and public interest, at least not in the competing commercial network model that evolved in the United States.

These pioneers won the day. Channels were reserved in both the television and the underdeveloped FM radio spectrum for a class of licenses that the Federal Communications

Commission would call, noncommercial, educational radio and television and they have become America's public broadcasting stations.

By any measure these pioneers might apply, public broadcasting has been a success. There are 344 public television stations around the country owned by 178 different licensees. Public radio has more than 500 stations. These public TV and radio stations are owned and operated by community boards, universities, state broadcasting authorities and even local school districts.

More than five million people donate their time, money and professional skills as volunteers, subscribers and local board members, making public broadcasting one of the largest membership organizations in the country.

The public is the source of our strength and we are accountable to them daily for the programs that we air.

Financially, the institution exceeds 1.8 billion dollars in annual revenue with about 17 percent of that amount coming from the federal government.

Most agree that some of the very best children's programs, news and public affairs broadcasts, drama, history, art and music programs appear on public television and public radio. And, more than 100-million people each week use one or more of these services. The answer to the question of whether public broadcasting is a successful and valuable public good is a resounding, "Yes."

The questions we must answer today, however, are different than those asked forty years ago: Do citizens of our nation any longer need a noncommercial, educational broadcasting system? Has technology, as George Will argued, overcome the need for public television? Is the institution off course, pursuing a political agenda, as charged by some in the Congress?

Based on the Senate vote two weeks ago of 84 to 11 in favor of reauthorizing the Corporation for Public Broadcasting for another three years, we might easily say, "Our importance to the American people has been overwhelmingly confirmed."

That is the case, but if a sense of victory is all that we take from this experience then we are missing an extremely important lesson.

The lesson (in the words of another of my colleagues) is that: "For public broadcasting, the era of assumed virtue is over." I would argue that the era of assumed virtue is over for all institutions with "public" in their title, but that's another speech.

What I would like to do today is to accept the premise and make the case for funding public television, outlining for you how we will put technology to work in new ways to serve the public interest through the end of this decade and into the twenty-first century.

Two words continue to define the need for public broadcasting. They are education and noncommercial. The public good offered by this institution lies in its ability to treat the American people as citizens of a nation rather than as consumers in a marketplace. No other commercial radio or television services have as their bottom line the educational value of their program service to the audience served.

"Aha," you say, "You've overlooked those wonderful services on The Discovery and The Learning Channel."

No, I haven't. These channels, like all the others on cable, exist solely to make a profit. If they fail at this objective, they will be replaced.

Those who argue for private goods (in essence the marketplace) to replace public goods, make a profound mistake by assuming the result will somehow be better. We

don't have to look very far to see the difference between marketplace rules and responsible public interest regulation. The Savings and Loan and airline industries could have used less of the former and more of the latter.

To assert absolute marketplace superiority only creates confusion in our ability to even talk about the value of what the Constitution calls "the general welfare." The term welfare itself, for example, is so charged with political rhetoric as to make useful discussion about its meaning to our society impossible.

We have lost the language of public service and adopted marketplace lexicon to describe our social aspirations. I cringe when I hear people talk about education as a product, teachers as service providers, principals and administrators as marketers and managers.

The purpose of education is not to sell goods or services to parents for the benefit of their children. The general welfare of this nation demands that public—not private—attention be paid to the care and nurturing of its most precious resource—the minds of its children.

The same thing has happened in broadcasting. What began as a grand design to serve the public interest, convenience and necessity, found itself (at least as far as television is concerned) portrayed as nothing more than another household appliance—"a toaster with pictures"—was the phrase used by one recent FCC Chairman to describe his view of television and its relationship to our society. This view framed an argument stating that the time for any regulation of the medium had passed and that spectrum value should be determined by the marketplace.

This view would sell the public airwaves to the highest bidder. Buyers then would be free to pursue the highest commercial return for their investment. That's "the American way!"

That is only part of the American way. The other part argues for equity, for bridges in communications policy that serve the needs of all Americans. It argues that the public airwaves are a national resource like its public lands. Multiple use of that resource requires public policies that take into account the need for commercial development as well as reserve part of our communications spectrum for public uses just as we preserve national forests and parks.

Fortunately for the American people, current members of the FCC agree on the need for sound, well-reasoned public policies for the use of the airwaves. The arguments that hold sway, however, are still based primarily on economic models that give only modest recognition to the social consequences of communications policy decisions.

Earlier I said that the terms education and noncommercial define public broadcasting's importance to this society.

Our emphasis on education has led some to charge that public broadcasting is an elitist institution, that it serves only those who are well educated and wealthy. Nothing could be further from the truth. Kevin Kline said it best when he said, "If education is elitist, then public television is elitist." The desire for education occurs at all levels of our society and public television has become an indispensable educational resource.

Right now, local stations serve 30 million elementary students each week and our telecourses are used by two out of three colleges. We're training teachers in how to use science programming in the classroom and delivering advance high school courses to students in 23 states via satellite.

But, let me tell you where we are going. We are developing plans to launch a math channel for teachers, parents and students and hope to have it ready in 1994. We are con-

necting high school students across the country in an electronic debate of national election issues this fall.

In December of 1993, when we move to a new satellite delivery system, public television will have the capacity to send as many as fifty-five different channels of video and over 200 channels of CD quality audio to our stations as well as to the schools, workplaces and homes of this nation.

The educational capacity of public television will take a giant leap forward in the middle of this decade, adding two-way interactive facilities. America will have an educational technology capability second to none in the world.

Ours is the challenge to wisely use this capacity to teach—to make the knowledge of past generations available to every individual who seeks it. Because, in addition to using the words noncommercial and educational to define public broadcasting's value to our society, we must add the terms universal access and quality.

Universal access stands for two things. First, regardless of ability to pay, everyone should have access to the finest of humankind's knowledge and experience through the choice to tuning to a particular channel on the dial. Second, that those who have something to say to their fellow citizens can get reasonable access to today's forum for such conversations. The creators of public broadcasting saw it as the venue for such dialogue.

Beyond accessibility is the basic issue of staying in touch with each other. As audiences continue to be splintered into niches for sports, comedy, movies and cartoons, only public television offers a unifying hearth to examine our culture as a whole. This is fundamental to our mission, and I believe it's fundamental to the continued vigor of this experiment in democracy.

The concept of universal access in public broadcasting embodies the dual right of equitable service to all the people; and the responsibility to offer opinions and points of view generally ignored on television and radio. To do so means that we sometimes create waves. And, I suppose that is inevitable.

For some of our critics, even the right of universal access is questionable. Like Marie Antoinette when speaking of another commodity in public demand, they respond, "let them buy cable."

The fact that cable is unavailable or unaffordable in forty-per cent of American homes carries no weight with folks at the Heritage Foundation who see all things as a matter of economic choice.

Other critics object to public broadcasting's role as presenter of ideas, visions and discussion that vary from the mainstream offerings of commercial television. For them we appear to be a vehicle for ideology.

Others argue that those in the heartland of this great nation shouldn't be forced to watch programs that are geared to major metropolitan regions of the country. The creators of public broadcasting devised an ingenious answer to questions about "What's appropriate for my community."

They structured the institution to leave the ultimate choice to local communities themselves. No one in public broadcasting can force any station to air a program that the station doesn't believe meets its community standards.

PBS makes decisions about programs in the national schedule. In ninety-nine percent of the cases stations all across the country accept and air the programs selected. Occasionally, a particular program is judged by an individual station, not to fit the viewing standards of its community. Their judgment

prevails. Local station control and responsibility for what airs in their community is the foundation of accountability in public television.

Complaints of bias about a small number of programs have come from the far left as well as from the right.

The left contends that public broadcasting has been captured by the established business interests of this nation. They give as evidence the numbers of programs on business and commercial topics as well as the choice of guests and presenters on news programs like the MacNeil/Lehrer NewsHour.

Most of the arguments from the right portray public television as captive of the "liberal left." Political documentaries and some cultural programming addressing homosexual themes have been roundly criticized as being unworthy of taxpayer support.

I am astonished how absurd this argument sounds when it is made against other public funded activities. No one ever asks how many taxpayers want to pay the salaries of policemen who beat up the people they arrest. Nowhere among the solutions to the problem identified is elimination of funding for the police force.

When the Supreme Court hands down a decision with which many taxpayers, perhaps even a majority, disagree, no one suggests that the court's funding authorization and appropriations be reduced.

Neither should eliminating public financing for our arts or public broadcasting institutions be the solution of first choice when addressing their perceived problems.

It was to the assertions of bias that CPB Board Chairman Sheila Tate responded in her speech last week in San Francisco at public television's annual meeting. She promised (and I join her and support the CPB Board's efforts) to address any perceived or real bias in public broadcasting's programs.

As in all things political, self interest will have to be carefully weighed by CPB in its evaluation of those who charge that such bias exists. And, those of us in public broadcasting must openly listen to and act on suggestions to improve the quality of our service to the American people.

CPB's board of directors must certify that our institution is acting in the public interest. And, together with our viewers and listeners, they must affirm our continued merit of federal support. That support is essential if we are to maintain the noncommercial, educational nature of our services in the decades to come.

Our unique base of federal, state, business and individual member support creates a unique mix of funding sources that sustain this institution. This mix gives us editorial independence from any single funding source, while making the contributions of each essential in our ability to offer the range and quality of services we provide each day.

Tight financial times put a greater burden on those in the public sector to clearly articulate the value of their institutions to those whose support they seek.

The case for public television includes its role as the nation's story teller, creating the national shared experience of reliving America's CIVIL WAR one hundred and thirty years after it happened.

The case for public television includes that of being teacher to millions of children and adults each week, helping them learn everything from their ABC's to Japanese to Probability Statistics to the natural wonders of the universe.

The case of public television includes that of provocateur: asking viewers to face ethical, political and moral dilemmas of such profound complexity that the only way to escape, as Fred Friendly says, is-by thinking.

The case for public television includes that of being America's town square, where voices and visions ignored elsewhere in the medium, can be seen, evaluated and judged. If found wanting, dismissed, but not for lack of a platform. Free speech only has meaning in a democracy if the right for all voices to be heard in the most powerful medium of our age is continually affirmed.

The case for public broadcasting rests on the American concept of citizenship, of providing equal opportunity and access to the richness of our cultural, artistic, philosophical and religious heritage.

From its structure to its mission of public service, the case for public broadcasting continues as strong and as bright today as it was forty years ago when our founding pioneers first petitioned to create noncommercial, educational radio and television services to meet the intellectual, artistic and spiritual needs of this nation.

The American people have a right see and hear noncommercial, educational broadcasting services. They, also have the responsibility to secure the blessings of those services for themselves and for their posterity.

Like I said at the beginning, that's pretty highfalutin stuff.

The marvelous thing about it for those of us who work in public broadcasting is that it's all true. Public service is the driving force at PBS. Our agenda is to provide those television services that are essential to this society for its democratic well being. We couldn't ask for a better or more challenging job.

□ 1310

Mr. RINALDO. Mr. Speaker, I yield 2 1/4 minutes to the gentleman from California [Mr. ROHRBACHER].

Mr. ROHRBACHER. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in opposition to the motion.

Mr. Speaker, when this House voted nearly 2 months ago against a balanced budget amendment to the Constitution, many in opposition insisted that Congress can exercise self-control and reduce spending.

Today, those who insisted that they can control their voracious appetites for our tax dollars have an opportunity to put our money where their mouths are.

We are discussing a \$1.1 billion 3-year authorization for what we must admit is a frill. This program is not vital to our national well-being, it does not feed hungry children, it does not expand economic growth, it does not uncover a cure for cancer; most assuredly it does absolutely nothing to reduce our uncontrolled \$400 billion annual deficit or to reduce our nearly \$4 trillion dollar national debt.

Funding this program is especially wrong because it is not something that only Government can do, or even something that Government does best. Public broadcasting has been made obsolete by the proliferation of cable which makes channels available for local access and educational programming, not to mention arts and entertainment, all of which fills the niche created by taxpayer-subsidized public broadcasting. Technology makes public broadcasting no longer necessary.

The only difference between for-profit cable, broadcast networks, and public broadcasting is that the private companies respond to consumer demand and competition. The private alternatives are competitive and they produce a broad range of quality programming at a profit. This programming would be actually broader if public broadcasting would go out of business and they would take up some of the better programs that are now subsidized by the taxpayers. Unfortunately we are being asked to fund a 37-percent increase for a federally subsidized alternative to profitable cable television, as well as video tapes, and other electronic alternatives.

With the collapse of communism, much has been done to reeducate people in the former Soviet bloc. We could learn from their experience that State-sponsored corporations and industries are not in the interest of a society. How ironic if we prevailed over socialism overseas only to be bankrupted by it at home, because no one in this body is willing to cut any Government program whatsoever, even one that is a service that can be provided by the private sector.

So now is the time for this body to demonstrate its ability to keep its word to the American public. We have been challenged to stop needless spending; this is a defining moment. We said we did not need a balanced budget amendment to do it. Let us do it now. Let us begin the long trek back to fiscal sanity by cutting at least this chunk of unnecessary spending that is not absolutely necessary.

The Federal Government is going broke, and we are going to spend another billion taxpayer dollars on subsidizing information and entertainment? Give me a break. Vote against this bill.

Mr. MARKEY. Mr. Speaker, I rise in strong support of H.R. 2977, the Public Telecommunications Act of 1991. This legislation, which originally passed the House last November, authorizes the appropriation of funds for the Corporation for Public Broadcasting [CPB] for fiscal years 1994 through 1996. This legislation will ensure that the public broadcasting system can continue to serve Americans with high quality, diverse, and innovative programming, community service, and technological innovation.

Since its inception in 1967, CPB and the public broadcasting community has succeeded in developing programming that challenges the hearts and minds of Americans of all ages and walks of life. But public broadcasters have not limited their efforts to creating and airing innovative programming. Public broadcasters have achieved excellence in numerous areas. They have pioneered technological developments, initiated community outreach and educational projects, widened communications access for disabled Americans, and enhanced and extended public broadcasting to underserved and underserved audiences. Looking toward the future, public broadcasters have pledged to use their technological and programming expertise for enhanced educational projects and expansion of radio service.

The funds authorized by this bill will provide the public broadcasting system with the resources critical to the achievement of these goals. The legislation authorizes CPB appropriations of \$310 million for fiscal year 1994, \$375 million for fiscal year 1995, and \$425 million for fiscal year 1996. The bill also authorizes continued funding of the Public Telecommunications Facilities Program [PTFP] at \$42 million for each of fiscal years 1992, 1993, and 1994. PTFP's grant funds will enable public television and radio broadcasters to reach areas not already served and to maintain and modernize existing facilities. The bill also expands the role of PTFP in broadening access to telecommunications services of underserved audiences, including deaf and hearing impaired and blind and visually impaired people.

In addition, the bill includes provisions to increase the managerial efficiency of the CPB Board; to enhance reporting requirements for CPB and the independent television service; to clarify that the Children's Television Act of 1990 applies to both commercial and non-commercial broadcasters; to improve the EEO performance of public broadcasting stations; and to enable CPB to fund affordable training programs.

The bill we are considering today also incorporates several provisions adopted by the Senate last month. These changes, which reflect the development of a bipartisan approach to these issues, will improve CPB's ability to serve the public.

First, in a new provision, the bill clarifies the existing statutory mandate of the CPB Board to facilitate the development of high quality, diverse, innovative, and creative programming that also is objective and balanced. Specifically, the bill requires the CPB Board to give the public the opportunity to comment on programming, to review national programming on a regular basis with an eye toward identifying needs not met by such programming, to take steps the CPB deems appropriate to meet its responsibilities regarding grant awards for national programming, and to report to Congress and public broadcasting stations on its efforts in that area. By facilitating citizen comment and reaction to public television and radio programming, this review process will strengthen the public broadcasting system. It will enable CPB to address unmet needs and unexposed points of view more efficiently and make it more responsive to its audience.

A second new provision requires CPB to maintain a public file that contains information concerning the funds given out by CPB and the independent television service for the production of national programming. This requirement will facilitate public access to information on CPB, without jeopardizing its independence in carrying out its mandated responsibilities. Much of the information that will appear in CPB's public file already is collected and available. This provision merely centralizes it and promotes greater public access and accountability.

Other new provisions in the bill will promote public broadcasting's participation in new educational telecommunications initiatives. Specifically, the bill requires CPB to prepare reports on the most effective way to establish and implement a ready-to-learn public television channel and to use telecommunications facilities for distance learning projects in rural areas.

Finally, this legislation includes new provisions that impose a ban on indecent programming on broadcast television and radio between the hours of 6 a.m. and 12 midnight; that require CPB to expand the text of the identification that follows programs funded by CPB; that require IVTS, to the maximum extent practicable, to award grants to recipients representing the widest possible geographic distribution; and that permit CPB Board members to sit until their successor is confirmed or for the remainder of the calendar year.

Mr. Speaker, this legislation is a consensus package that permits CPB and public broadcasters to continue to provide exceptional programming and services to the American people. I want to thank the full committee chairman, Mr. DWIGG, for his continuing guidance and support in this area, and the ranking Republican member of the subcommittee, Mr. RINALDO, for his hard work and cooperation on this legislation. Further, I want to acknowledge the helpful efforts of the public broadcasting community, including among others, the Corporation for Public Broadcasting, America's Public Television Stations, and National Public Radio.

I urge my colleagues to support this important legislation so that the President may give it his immediate consideration.

Mr. McMILLEN of Maryland. I'm pleased to support the reauthorization of funding for the Corporation for Public Broadcasting for fiscal years 1994-96, and congratulate Chairman MARKEY for his efforts on this legislation.

Public television provides a truly unique service to the public, and remains an important source of educational, cultural and public affairs programming for the Nation. It has also proven extremely effective in serving the public interest.

Unlike commercial broadcasting, public broadcasting can operate without being tied to the dictates of program ratings. The buffer from such forces has a demonstrated record, one which has been crucial in maintaining diversity and program quality.

The educational impact of the CPB extends far beyond "Sesame Street." For example, it provides college courses—broadcast daily—for which adults can receive credit. This addition to the high-quality entertainment for which public broadcasting is so well-known.

Maryland's public television service provides an excellent example of such educational investments. MPT's "College of the Air" has helped tens of thousands of students gain credit toward their degrees through telecourses. By working with numerous institutions of higher learning in our region, it is one of the most successful programs in the Nation.

For more than 20 years, Maryland Public Television [MPT] has provided excellent service to the citizens of my district and State. MPT proves how the Federal, State, and private funds that support public broadcasting benefit our citizens.

We, in Maryland, are proud of the achievements of our public television, and the benefits it provides. The problems raised in the other body by a handful of individuals has been troubling to me, but I am pleased that an agreement satisfactory to all concerned was able to be worked out. The representatives of CPB and America's public TV stations are to be commended for their efforts in securing this agreement.

Again, I commend the chairman on this legislation, and urge my colleagues to support reauthorization legislation.

Mr. SWIFT. Mr. Speaker, I would like to address in particular one important provision of this legislation as the significance of it may have escaped the attention of the Members.

For the first time in 14 years, we are amending in the 1934 Communications Act the declaration of policy which describes the goals and states the purpose of the Corporation for Public Broadcasting. Through the declaration, we are amending and expanding the CPB's underlying mandate in a significant way by stating—

It is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies.

What we are doing in this provision is planning for the future. We are clearly on the edge of a number of exciting and challenging breakthroughs in communication technologies. In particular, digital compression and improved satellite broadcast technology should make multi-channel, direct-to-the-home satellite broadcast service [DBS] a strong competitor to existing cable systems within the next few years.

DBS will almost certainly be a national or regional broadcast service. And it will therefore be difficult to reconcile our traditional concept of localism, of local broadcasters holding up a mirror to reflect the needs and aspirations of their local community, with this new technology. But the DBS technology will serve very well to reach diverse communities of interest—that may be dispersed geographically—but have common interests, needs, and concerns.

It is these dispersed communities, whether they are ethnic communities, cultural communities, or others with common interests or educational needs, that can be well-served in the aggregate where on a purely local level their needs would not likely be served by local broadcasters or cable companies.

In the cable bill that the House just passed, there is a provision that I sponsored which requires that DBS operators reserve—at no more than the direct cost of transmitting the signals—4 to 7 percent of their capacity for noncommercial use. That noncommercial set-aside is to be used by public telecommunications entities and educational institutions to serve the public needs, including those communities of interest that may be underserved by existing over-the-air broadcasting.

I commend the authors of this legislation for including this statement of public policy; that the public has the right to noncommercial programming that reflects their needs and concerns—as individuals and as members of communities of common interests. To extend this public right to new communications technologies as they come on line is a most appropriate extension of the goals of the 1934 Communications Act of an informed citizenry and the universal availability of information.

Mr. SCHEUER. Mr. Speaker, I rise in strong support of this reauthorization bill.

Mr. Speaker, this reauthorization recognizes that public broadcasting is an invaluable resource for all Americans, but particularly for our children.

Mr. Speaker, American children watch an average of between 4 and 6 hours of television every day. Given this fact, it is crucial that these children have an attractive alternative to violent programming, sports, and cartoons. CPB-funded programs such as "Reading Rainbow" and "Sesame Street" fill that niche. These programs are really after-school education, and they contribute to the development of brilliant young minds across our country. This reauthorization will allow public broadcasting to expand its educational program hours and stay on the cutting edge of program quality.

This authorization will also foster the public broadcasting community's partnership with our Nation's schools and universities. In addition to the programs which run on public television and radio stations, CPB has funded innovative instructional on video tapes and laser discs for classroom use. WNET—channel 13—an outstanding public television station in New York City, has established a summer institute program which trains teachers to use these public broadcasting tools as a supplement to their daily lessons.

CPB and public broadcasters have also used satellite-delivery technology to bring their programming into the American classroom. Mr. Speaker, this innovation breaks down the traditional barriers of geography and income, enabling all American students to learn foreign languages, study current events, or prepare for advanced placement exams through interactive programming. With our support these types of programs will flourish, and assist us in our mission to improve American schools and universities.

Excellent educational programming exists on cable television—Arts & Entertainment, the Discovery channel. However, public broadcasting is the only free, over-the-air source with a congressional mandate to serve the public. It reaches all Americans, regardless of income or geography, with programming of superb quality—quality which is rarely equaled by over-the-air broadcast TV.

For a quarter-century, the public broadcasting community has produced the finest programming on television and radio—programs such as "The Civil War," "Nova," "Washington Week in Review," and "The American Experience." This authorization recognizes these achievements, and paves the way for future successes. I urge my colleagues to support this legislation.

Mr. RICHARDSON. Mr. Speaker, just over a year ago, the House Telecommunications Subcommittee, began its work to pass a reauthorization bill for the Corporation for Public Broadcasting [CPB]. Today, I believe we have a final product that will strengthen and expand a public broadcasting system enjoyed by millions of Americans in their homes and in their schools.

Today, Congress will do its part: Make a financial commitment of \$1.1 billion to public broadcasting over the next 3 fiscal years 1994–96. I strongly believe, and the Telecommunications Subcommittee has clearly stated, that the public broadcasting community needs to match this financial commitment with a commitment of its own to expand service and resources to stations serving rural and minority audiences.

I want to commend the Corporation for Public Broadcasting [CPB] and the public radio community for undertaking a thorough review

of all its radio grant programs. I appreciate the time and effort made by both CPB and National Public Radio [NPR] to see that my concerns about committing additional resources to rural and minority stations have been addressed.

The recommendations made by CPB's radio advisory committee will ensure that a significant portion of the increased funding provided to CPB under H.R. 2977 will be used for reaching underserved and unserved public radio audiences.

CPB's plans are to continue successful expansion grant programs, step program acquisition, and sole service grants, increase funds to existing rural and minority sole-service stations, and provide additional funds for extending signals to hard-to-reach areas. The investment in these programs for fiscal year 1994 will be \$5.7 million—more than the entire increase allocated to public radio for that year. I am pleased that the public radio community has made good on its personal commitment to me on these issues.

Specifically, CPB's program will: increase the size of CPB grants for stations operating in exceptionally rural communities and for stations serving minority audiences; extend the reach of public radio programming by providing grants specifically for acquisition of national radio programming for satellite interconnected stations not currently receiving CPB support; and create a fund for stations extending their service to otherwise unserved listeners via repeaters, translators, and boosters.

Mr. Speaker, these initiatives are very important, and they will strengthen the Nation's public radio system. I look forward to the completion of CPB's review of its television grant programs, which is now underway, and hope that its recommendations will address many of these same issues.

I would urge my colleagues to support this bill. An aggressive Federal commitment to public broadcasting is needed now more than ever before. H.R. 2977 deserves the enthusiastic support of the full House.

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to House Resolution 535, the previous question is ordered on the motion.

The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL].

The motion was agreed to.

A motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter on H.R. 2977, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

#### PROVIDING FOR CONSIDERATION OF H.R. 2782, PROVIDING ERISA DOES NOT PREEMPT CERTAIN STATE LAWS

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 536 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 536

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2782) to amend the Employee Retirement Income Security Act of 1974 to provide that such Act does not preempt certain State laws, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be considered for amendment under the five-minute rule. Consideration of the bill, and amendments thereto, shall not exceed four hours. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from California [Mr. BEILENSON] is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. DEBIER], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 536 is the rule providing for consideration of H.R. 2782, which would amend the Employee Retirement and Income Security Act of 1974 to provide that the act does not preempt certain State laws.

This in an open rule, providing for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor.

In addition to the 1 hour of general debate, the rule limits the time for consideration of the bill for amendment to 4 hours.

The Committee on Rules felt, after hearing testimony, that this restriction gives a fair and reasonable amount of time for a bill to which no amendments were offered in the subcommittee or the full committee, and especially since, as we all know well, we have a very limited amount of time before the end of the session to complete work on a large number of bills.

Finally, Mr. Speaker, the resolution provides for one motion to recommit.

Mr. Speaker, H.R. 2782 amends the Employee Retirement Security Act—popularly known as ERISA—to clarify that State laws in three specific areas

Mr. MOAKLEY. Mr. Speaker, House Resolution 535 makes it in order to move to take H.R. 2977 from the Speaker's table with the Senate amendment and concur in the Senate amendment. The motion is to be debatable for up to 1 hour and the debate is equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce.

Mr. Speaker, House Resolution 535 provides a procedural mechanism to speed up the final consideration of the Public Telecommunications Act of 1992. It permits the House to move to adopt the Senate amendments and send the bill to the President without having to go to conference. The House passed this bill last November under suspension of the rules and the Senate recently passed it, with amendments, by a vote of 84 to 11.

Briefly, this bill authorizes a modest increase in funding for the next 3 years for public broadcasting. It also contains provisions to improve the efficiency and the accountability of the board; increase public broadcasting services to underserved audiences—including the visually and hearing impaired; prohibit the broadcasting of indecent programming; and promote affordable training programs for employees at public broadcast stations.

Mr. Speaker, the public broadcasting system provides many educational and cultural benefits to the American people. Its mission, which began 23 years ago, has more than fulfilled its promise to promote education, community awareness and technological innovation. I urge passage of the rule and the bill so that we may continue to fulfill our long-standing commitment to national public radio and television.

Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, the chairman of the committee, Mr. MOAKLEY, has fully explained the provisions of this rule.

This is important legislation whose purpose is to authorize appropriations for public broadcasting. The Corporation for Public Broadcasting is currently authorized through fiscal year 1993 under 2-year advance reauthorizations. This legislation would reauthorize the Corporation for fiscal years 1994 through 1996.

Mr. Speaker, the Government provides public broadcasting with about 17 percent of its total funding, and the remainder comes from State and local governments, corporate underwriting, individual contributions, colleges, and other sources. In addition to providing funding for Corporation for Public Broadcasting Program activities, the bill would authorize \$42 million for each of the 3 years for capital investments in public television and radio facilities. It would also make changes to

the Board of Directors, reducing the number of from 10 to 9 to avoid tie votes. Board members' would be staggered so that three terms expire every 3 years.

Mr. Speaker, the Senate made a number of changes to our bill. In lieu of going to conference, the rule provides that the House will vote on a motion to concur in the Senate amendment and pass the bill. I urge the adoption of the rule.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### REPORT ON SITUATION IN SARAJEVO

(Mr. MURTHA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MURTHA. Mr. Speaker, I would like to give the House a report of my trip to Sarajevo over the weekend. I left at 2 o'clock on Friday and flew into Rhein Main and then got on a C-130 and flew into Sarajevo.

The fighting the day before was intense. When I got there it had let up, even though you could hear mortar rounds and sniper fire in the distance. As a matter of fact, the bus holding the children that was attacked the day we were there went by us, and they inadvertently, or on purpose, hit these small children.

The important point about what is going on is that they can close the airport at any time. It would be impossible for us to keep it open without a substantial force. As a matter of fact, I think any possibility of military intervention on a small scale would be counterproductive.

The hills around Sarajevo remind me of Beirut. It is not like the desert where it is open. Our particular weapons which are so effective in an open territory would be almost impossible for us to get to positions that are covered by foliage and that are hidden in the area.

The United Nations is doing a phenomenal job in feeding the people. We have just enough airplanes going in every day to feed the people there. As a matter of fact, they have 3 days supply of food in Sarajevo, which is only a minor part of the overall refugee problem.

I am convinced that we have to allow the European Community to take the lead, that we have to do it under the United Nations, and any unilateral action by the United States would be a mistake. For us to intervene militarily would take massive U.S. forces, and my recommendation to the President

would be to let the Europeans handle it and to let this thing be settled under the United Nations.

Mr. Speaker, it is a tragic situation. All of us feel badly about it. I visited a refugee center where an old fellow, 83 years old, said he was a child in World War I, and that was terrible; he was in World War II and it was a tragic situation; and this is worse.

They are forcing people out of their homes. You can see the houses that have been destroyed by the mortar and artillery fire. Of course, there are no windows in any of the homes surrounding the airport at Sarajevo, and I assume that is true of any place that has been attacked in Bosnia.

We have got a real problem facing us with winter coming on, with nobody having any opportunity to be warm at all. Of course, the weather would keep food from being distributed.

So I can only say that it is a tough situation, but the Europeans have to take more of a lead, and, of course, the United Nations has to advise us on what we should do. But I certainly would be against any massive military intervention by the United States in that area.

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#### TELECOMMUNICATIONS ACT OF 1992

Mr. DINGELL. Mr. Speaker, pursuant to House Resolution 535, I offer a motion.

The Clerk read as follows:

Mr. DINGELL moves to take from the Speaker's table the bill H.R. 2977, to authorize appropriations for public broadcasting, and for other purposes, with the Senate amendment thereto, and to concur in the Senate amendment.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to House Resolution 535, the gentleman from Michigan [Mr. DINGELL] will be recognized for 30 minutes, and the gentleman from New Jersey [Mr. RINALDO] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I yield myself 5 minutes. Mr. Speaker, I rise in support of the motion to concur in the Senate amendment to H.R. 2977, and to urge my colleagues to do likewise. Although I have reservations about several of the provisions added by the Senate, which I will address later, on balance I believe that the amendments should be accepted by this body so that the legislation can proceed to the President for his signature.

I should note that our colleague, the Honorable ED MARKEY, the able chairman of the committee's Subcommittee on Telecommunications and Finance, is unable to be with us today. I ask unanimous consent that his statement be inserted into the RECORD at this point, and very much regret his absence.

Mr. Speaker, last November, the House passed its version of H.R. 2977,

authorizing appropriations for the Corporation for Public Broadcasting, and for other purposes. CPB is the private corporation that was created by the Congress to implement the provisions of the Public Broadcasting Act more than 20 years ago.

By any measure, CPB has done a magnificent job. Today, public television and radio bring programming material to millions of Americans—from educational programming for children to news and public affairs programming. Both public television and public radio add to the diversity of programming that is available to the American people, and help to ensure that all Americans have access to high quality, informative programming that otherwise would not be available to them.

As amended by the Senate, H.R. 2977 authorizes \$310 million for fiscal year 1994, \$375 million for fiscal year 1995, and \$425 million for fiscal year 1996. While ultimately it may not be possible for Congress to provide funds at these levels, in my view these figures represent responsible authorization levels. Both public television and radio are partners in our national effort to improve America's education. Public broadcasting has the potential to contribute much more—but only if adequate resources are made available.

I would like to address several of the amendments that were added to H.R. 2977 by the other body.

The first is the so-called objectivity and balance amendment that was a manager's amendment offered by the chairman of the Senate's Communications Subcommittee, Senator D'OUVE. Although the amendment mandates new procedural requirements, it most certainly does not establish new policy. Recipients of Federal funds for public broadcasting have always been held accountable for the funds that they receive; this provision does not change that requirement in any manner. Specifically, the amendment does not expand the Corporation's authority with regard to objectivity and balance as that authority has been interpreted by the courts, including the U.S. Court of Appeals for the District of Columbia Circuit in *Accuracy in Media, Inc. v. FCC.*, 521 F. 2d 288, (D.C. Cir. 1975), cert. denied, 425 U.S. 934 (1976).

Rather, the amendment requires CPB to establish new procedures that will facilitate public broadcasting's accountability to Congress and to the American people. The amendment requires that Corporation to review its current efforts to meet the responsibilities outlined in section 396(g)(1)(A) of the Communications Act—including adherence to objectivity and balance in programs of a controversial nature—to solicit the views of the public on the services provided by public broadcasters, and to review national programming to determine whether it meets congressional mandates. On the basis of the information gathered above, it can act to address any dis-

ered imbalances or unmet needs through program grants made pursuant to clauses (11)(II), (11)(II), and (11)(III) of section 396(k)(3)(A) of the act and through dissemination of information on identified concerns throughout the public broadcasting system.

Moreover, the terms of this amendment do not have any bearing on the Corporation's awarding of community service grants to public television and radio stations pursuant to clauses (11)(I) and (11)(I) of section 396(k)(3)(A) of the Communications Act. This amendment neither enhances nor diminishes the Corporation's existing authority with respect to its awarding of CSG's to public television and radio stations.

While the amendment refers to national program production and acquisition grants (NPPAG's), it does not authorize the Corporation to impose restrictions or conditions on the use or expenditure of NPPAG grants different from the types it currently imposes. For example, CPB cannot tell a public station what programming it must produce or acquire; it cannot require that stations pool funds at the national level for the production of programming that the Corporation's Board determines should be produced; it cannot require that, as a condition for receiving the NPPAG grant, the station provide a particular program or type of program, and most importantly, it cannot require that a station broadcast any program or prohibit the broadcast of any program.

Rather, the Corporation may provide information, engage in discussions with stations, and advise stations, based on the Board's review of national public broadcasting programming and its analysis of public comment, as to areas of national programming that stations may consider for special emphasis.

Neither Congress nor CPB can substitute their own judgment for that of local radio and television licensees who must ultimately decide on the mix of programming that best meets the needs and interests of the communities. Those licensees are held accountable by the Federal Communications Commission during the course of renewing their licenses, and nothing in this amendment should be permitted to interfere with the discretion of those licensees as they discharge their obligations and responsibilities to the communities they were licensed to serve.

The second Senate-passed amendment that I would like to address is the so-called Byrd amendment. This amendment, which was added to the bill on the Senate floor by an overwhelming majority, prohibits indecent programming on most commercial and public radio and television stations between the hours of 6 a.m. and 12 midnight.

Now I understand the sentiments that led to the adoption of this amendment. Some of the stuff that is on commercial radio is, quite simply, appall-

ing. Much of the material that appears on television is no better. I wish we had at our disposal a constitutional mechanism that would protect our children from programming material of this type.

But the Byrd amendment is clearly unconstitutional. The courts have spoken. The adoption of this amendment simply repeats the action of the Congress in 1988, when the Helms amendment was added to an appropriations bill. That amendment, which imposed a 24-hour-a-day ban on indecent speech, was overturned by the court in *Action for Children's Television v. FCC.*, 932 F.2d 1504 (D.C. Cir. 1991) cert. denied, 112 S. Ct. 1281 (1992). I insert the entire text of this decision into the RCOOB at this point.

(U.S. Court of Appeals for the District of Columbia Circuit, No. 88-1916)

**ACTION FOR CHILDREN'S TELEVISION, et al., PETITIONERS v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS; CHILDREN'S LEGAL FOUNDATION, et al., INTERVENORS**

Argued January 28, 1991.

Decided May 17, 1991.

Timothy B. Dyk for Capital Cities/ABC, Inc., and CBS, Inc., with whom Henry Geller and Donna Lampert, for Action for Children's Television, John A. Powell and C. Edwin Baker, for American Civil Liberties Union, James Popham, for Association of Independent Television Stations, Inc., Steven A. Lerman, Dennis P. Corbett and Laura B. Humphries, for Infinity Broadcasting Corporation, Frits E. Attaway, for Motion Picture Association of America, Inc., Henry L. Baumann and Stephen A. Booksbester, for National Association of Broadcasters, Howard Monderer, for National Broadcasting Company, Inc., Theodore A. Miles and Karen Christensen, for National Public Radio, Andrew Jay Schwartzman and Jan G. Levine, for People for the American Way, Jonathan D. Blake, for Post-Newsweek Stations, Inc., Paula A. Jameson and Nancy H. Hendry, for Public Broadcasting Service, J. Laurent Boharil, for Radio-Television News Directors Association, Jane E. Kirtley, for The Reporters Committee for Freedom of the Press, and Bruce W. Sanford, for Society of Professional Journalists were on the joint brief, for petitioners Action for Children's Television, et al. Molly Panker, for National Broadcasting Company, Inc., Lois Schiffer, for National Public Radio, Martin Wald and Janet E. Milne, for Post-Newsweek Stations, Inc., and James M. Smith, for Radio-Television News Directors Association, also entered appearances for petitioners.

Eric M. Lieberman, with whom John Crigler, William J. Hyrnes, and Edward de Gracia were on the brief, for petitioner The Pacific Foundation and Interveners PFN American Center, Allen Ginsberg, et al.

Robert L. Pettit, General Counsel, Federal Communications Commission, with whom Daniel M. Armstrong, Associate General Counsel, Jane E. Mago, Sue Ann Preskill, and Laurence N. Bourne, Counsel, Federal Communications Commission, and Barbara L. Herwig and Jacob M. Lewis, Attorneys, Department of Justice, were on the brief, for respondents.

James P. Mueller, for Children's Legal Foundation and American Family Association, Peggy M. Coleman, for American Family Association, and Paul J. McGeedy, for Morality in Media, Inc., were on the joint brief, for intervenors and amicus curiae.

Bruce A. Taylor and Benjamin W. Bull entered an appearance for intervenor Children's Legal Foundation, et al.

Before: Mikva, Chief Judge, Edwards and Thomas, Circuit Judges.

Opinion for the Court filed by Chief Judge Mikva.

Mikva, Chief Judge: This case presents constitutional challenges to a Federal Communications Commission ("FCC" or "the Commission") order, promulgated at the direction of Congress, barring all radio and television broadcasts of "indecent" material. We believe that the disposition of this case is governed by our prior decision in *Action for Children's Television v. Federal Communications Commission*, 853 F.2d 1332 (D.C. Cir. 1988), in which we rejected vagueness and overbreadth challenges to the Commission's definition of indecency but found that the Commission's curtailment of "safe harbor" broadcast periods impermissibly intruded on constitutionally protected expression interests. Accordingly, we grant the petition for review.

## I.

The particulars of this case are best understood within the history of government efforts to regulate the broadcast of indecent material. Since 1927, federal law has prohibited the broadcast of "any obscene, indecent, or profane language." 18 U.S.C. §1464 (1988); see also Radio Act of 1927, §29, 44 Stat. 1172 (1927) (original prohibition against utterance of "obscene, indecent, or profane language"). In 1975, the Commission essayed to "authoritatively construe[]" the term "indecent" and to distinguish it from the modern definition of obscenity, as formulated by the Supreme Court in *Miller v. California*, 413 U.S. 15 (1973). See *Pacific Found.*, 86 F.C.G. 2d 94, 97 (1975). The Commission defined indecency as "language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs," and emphasized that its primary regulatory interest lay in protecting children from "language which most parents regard as inappropriate for them to hear." Id. at 98. The Supreme Court upheld the Commission's finding that a radio station's afternoon broadcast of a George Carlin comedy monologue entitled "Filthy Words" was indecent under section 1464. See *Federal Communications Commission v. Pacifica Found.*, 438 U.S. 726, 738-41 (1978).

The Commission, by its own account, subsequently "took a very limited approach to enforcing the prohibition against indecent broadcasts." In re *Infinity Broadcasting Corp. of Pennsylvania*, 3 FCC Rod 930 (1987) [hereinafter *Reconsideration Order*]. The Commission essentially restricted its enforcement efforts to material broadcast before 10:00 p.m. that involved "the repeated use, for shock value, of words similar or identical to those satirized in the Carlin 'Filthy Words' monologue." Id. at 930. Between 1975 and 1987, no broadcasts at all were found actionable under this narrow prohibition. See id.

By 1987, however, the Commission had concluded that "the highly restrictive enforcement standard employed after the 1975 *Pacifica* decision was unduly narrow as a matter of law and inconsistent with our enforcement responsibilities under Section 1464." Id. Returning to the generic definition of indecency it had developed in *Pacifica*, the Commission issued three rulings declaring material that would not have violated the "Filthy Words" test to be indecent. See *Pacifica Found.*, 3 FCC Rod 2698 (1987); *The Regents of the Univ. of California*, 2 FCC Rod 3703 (1987); *Infinity Broadcasting Corp. of Pennsylvania*, 3 FCC Rod 3705 (1987); see also *New Indecency Enforcement Standards to be Applied*

*to All Broadcast and Amateur Radio Licensees*, 3 FCC Rod 3726 (1987) (summarizing Commission policies). Significantly, two of the cited broadcasts had aired after 10:00 p.m., the time period previously identified by the Commission as a "safe harbor" during which the risk of children in the broadcast audience was thought to be minimal. See id. at 3726. On reconsideration, the Commission affirmed its warnings with respect to the three broadcasts and noted, in response to requests for more specific rules regarding time channeling, that 12:00 midnight was its "current thinking" as to when the risk of children in the broadcast audience could reasonably be thought minimized. See *Reconsideration Order*, 3 FCC Rod at 934, 937 n.47.

Reviewing the Commission's order, we first rejected petitioners' vagueness and overbreadth challenges to the Commission's generic definition of indecency. See *Action for Children's Television v. FCC*, 853 F.2d 1332, 1338-40 (D.C. Cir. 1988) [hereinafter *ACT I*]. However, we vacated the Commission's rulings that the two post-10:00 p.m. broadcasts were indecent. In addition to calling the Commission's findings "more ritual than real" and its underlying evidence "insubstantial," id. at 1341-42, we opined that a "reasonable safe harbor rule" was constitutionally mandated. Id. at 1343 n.18. Accordingly, we instructed the Commission to determine on remand, "after a full and fair hearing . . . the times at which indecent material may be broadcast." Id. at 1344.

Before the Commission could carry out this court's mandate, Congress intervened. On October 1, 1988, two months after the ACT I decision issued, the President signed into law a 1989 appropriations bill containing the following rider:

"By January 21, 1989, the Federal Communications Commission shall promulgate regulations in accordance with section 1464, title 18, United States Code, to enforce the provisions of such section on a 24 hour per day basis."

Pub. L. No. 100-459, §608, 102 Stat. 2226 (1988) (emphasis added). Concluding that "[t]he directive of the appropriations language affords us no discretion," the Commission promulgated a new rule pursuant to section 1464 prohibiting all broadcast of indecent materials. See *Enforcement of Prohibitions Against Broadcast Obscenity and Indecency in 18 U.S.C. §1464*, 4 FCC Rod 457 (1988) [hereinafter *Order*], codified at 47 CFR §73.3999 (1990) (restrictions on the transmission of obscene or indecent language). The Commission also "abandoned [its] plans to initiate a proceeding in response to the concerns raised by" the ACT I panel. *Order*, 4 FCC Rod at 457.

A panel of this court granted petitioners' motion to stay enforcement of the ban pending judicial review. See *Action for Children's Television v. FCC*, No. 88-1916 (D.C. Cir. Jan. 23, 1989). Six months later, while briefing on the validity of the Commission's order was underway in this court, the Supreme Court issued an opinion finding a blanket ban on indecent commercial telephone message services unconstitutional. *Sable Communications of Cal., Inc. v. FCC*, 493 U.S. 115, 109 S. Ct. 2829 (1990). Believing that *Sable* left open the possibility that indecent broadcasts may be proscribed if the Commission could prove that no less restrictive measure would effectuate the government's compelling interests, the Commission sought and obtained a remand from this court in order to assemble the relevant data supporting a total ban. *Action for Children's Television v. FCC*, No. 88-1916 (D.C. Cir. Sept. 12, 1989) (remanding record to the FCC for a "full and fair hearing on the issue of the propriety of indecent broadcasting").

The Commission subsequently solicited public comments on the validity of a total ban on broadcast indecency. See *Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. §1464*, 4 FCC Rod 8858 (1989). After receiving and reviewing the comments, the Commission issued a comprehensive report concluding that "a 24-hour prohibition on indecent broadcasts comports with the constitutional standard the Supreme Court enunciated in *Sable* for the regulation of constitutionally protected speech." *Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. §1464*, 5 FCC Rod 6297, 6297 (1990). Finding a "reasonable risk that significant numbers of children ages 17 and under listen to radio and view television at all times" without "active" parental supervision, the Commission concluded that no alternative to a total ban would effectuate the government's compelling interest in protecting children from broadcast indecency. See id. at 6297, 6308. Current proceedings before this court followed issuance of the Commission's report.

## II.

Petitioners, an amalgam of broadcasters, industry associations, and public interest groups, present several constitutional challenges to the Commission's action. First, they claim (some more spiritedly than others) that the Commission's definition of indecency is unconstitutionally vague and overbroad. Second, they contend that a total ban on broadcast indecency cannot withstand constitutional scrutiny. We address petitioners' contentions in turn.

### A. Vagueness and overbreadth challenges

Petitioners contend that the Commission's definition of indecency—"language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs," *Order*, 4 FCC Rod at 457—is unconstitutionally vague. A statute or regulation is void for vagueness if it "either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application." *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1994) (quoting *Connally v. General Construction Co.*, 269 U.S. 365, 391 (1926)).

We have already considered and rejected a vagueness challenge to the Commission's definition of indecency. In ACT I, we noted that the Supreme Court, entertaining a similar challenge in *Pacifica*, had quoted various elements of the definition with approval and had ultimately affirmed the Commission's application of the definition to the broadcast under review. See ACT I, 853 F.2d at 1338-39. In our view, the Supreme Court's decision in *Pacifica* dispelled any vagueness concerns attending the definition. See id. at 1339 ("[I]f acceptance of the FCC's generic definition of 'indecent' as capable of surviving a vagueness challenge is not implicit in *Pacifica*, we have misunderstood Higher Authority and welcome correction."); cf. *Information Providers' Coalition v. FCC*, No. 90-70779, 811 Op. at 2635-37 (9th Cir. March 21, 1991) (rejecting vagueness challenge to similar definition of indecency in dial-a-porn context). Our holding in ACT I precludes us from now finding the Commission's generic definition of indecency to be unconstitutionally vague.

Some of the petitioners raise the additional claim that the definition of indecency is unconstitutionally overbroad. They contend that, because the Commission fails to recognize "serious merit" as an absolute defense to a charge of indecency, the definition sweeps even constitutionally protected expression within its ambit. See *Houston v. Hill*, 423 U.S. 451, 459 (1987) (noting that stat-

utes "that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application").

We rejected an identical overbreadth challenge in ACT I. We noted that indecent material qualifies for First Amendment protection regardless of merit, but that even material with "significant social value" may have a strong negative impact on children. See *Act I*, 852 F.2d at 1340. We thus found the Commission's method of identifying material suitable for broadcast only during the late night, safe harbor hours—whereby merit is treated as a "relevant factor in determining whether material is patently offensive" but "does not render such material per se not indecent"—to be permissible. See *id.* at 1339-40. Given that our decision today reaffirms the need for safe harbor periods during which indecent material may be broadcast and invalidates the Commission's attempt to ban such broadcasts altogether, we have no reason to revisit ACT I's conclusion that the Commission's generic definition of indecency comports with constitutional overbreadth requirements.

#### B. Challenge to total ban on broadcast indecency

Petitioners' core challenge is to the constitutional validity of a total ban on the broadcast of indecent material. Their contentions are two-fold: First, they claim that, under Supreme Court and circuit precedent, the government may not completely suppress indecent speech in any medium. Second, they argue that even if a total ban could theoretically be justified, the Commission's action here fails to satisfy the strict scrutiny standard recently reaffirmed by the Supreme Court in *Sable*.

We agree with petitioners that circuit precedent compels our rejection today of a total ban on the broadcast of indecent material. In ACT I, we stated that: "Broadcast material that is indecent but not obscene is protected by the first amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what the people say and hear." 852 F.2d at 1344. Addressing the scope of permissible regulation, we explained that: "Content-based restrictions ordinarily 'may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest.'" [citation omitted] The Supreme Court has recognized a government's interest in "safeguarding the physical and psychological well-being of a minor" as "compelling." [citations omitted] But that interest, in the context of speech control, may be served only by carefully-tailored regulation." *Id.* at 1343 n.18.

We found that the Commission's elimination of the post-10:00 p.m. "safe harbor" period failed to satisfy these constitutional standards. Specifically, we concluded that:

"[T]he precision necessary to allow scope for the first amendment shielded freedom and choice of broadcasters and their audiences cannot be accomplished, we believe, unless the FCC adopts a reasonable safe harbor rule."

*Id.* We therefore instructed the Commission, on remand, to "afford broadcasters clear notice of reasonably determined times at which indecent material safely may be aired." *Id.* at 1343.

Our holding in ACT I that the Commission must identify some reasonable period of time during which indecent material may be broadcast necessarily means that the Commission may not ban such broadcasts entirely. The fact that Congress itself mandated the total ban on broadcast indecency does not alter our view that, under ACT I,

such a prohibition cannot withstand constitutional scrutiny. While "we do not ignore" Congress' apparent belief that a total ban on broadcast indecency is constitutional, it is ultimately the judiciary's task, particularly in the First Amendment context, to decide whether Congress has violated the Constitution. See *Sable*, 109 S. Ct. at 2838. Moreover, we note that introduction of the appropriations rider preceded issuance of our decision in ACT I; thus, the relevant congressional debate occurred without the benefit of our constitutional holding in that case. See 134 CONG. REC. S9911-S9915 (daily ed. July 28, 1988).

Nothing else in the intervening thirty-four months has reduced the precedential force of ACT I. Indeed, the Supreme Court's decision in *Sable*, striking down a total ban on indecent commercial telephone messages, affirmed the protected status of indecent speech and reiterated the strict constitutional standard that government efforts to regulate the content of speech must satisfy. See *Sable*, 109 S. Ct. at 2836 (noting that "[s]exual expression which is indecent but not obscene is protected by the First Amendment," and stating that the government may "regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest"). See also *Consolidated Edison Co. v. Public Serv. Comm'n.*, 447 U.S. 530, 540 (1980). Even the Commission, prior to congressional enactment of the appropriations rider, shared this view. See *Reconsideration Order*, 3 FCC Rod at 331 (dismissing suggestion that section 1464 should be read to totally prohibit the broadcast of indecent material, as such a reading would "run afoul of [the] constitutional premise" that the Commission "may only do that which is necessary to restrict children's access to indecent broadcasts" and "may not go further so as to preclude access by adults who are interested in seeing or hearing such material").

Thus, neither the Commission's action prohibiting the broadcast of indecent material, nor the congressional mandate that prompted it, can pass constitutional muster under the law of this circuit.

#### III.

We appreciate the Commission's constraints in responding to the appropriations rider. It would be unseemly for a regulatory agency to throw down the gauntlet, even a gauntlet grounded on the Constitution, to Congress. But just as the FCC may not ignore the dictates of the legislative branch, neither may the judiciary ignore its independent duty to check the constitutional excesses of Congress. We hold that Congress' action here cannot preclude the Commission from creating a safe harbor exception to its regulation of indecent broadcasts.

Our decision today effectively returns the Commission to the position it briefly occupied after ACT I and prior to congressional adoption of the appropriations rider. The Commission should resume its "plans to initiate a proceeding in response to the concerns raised" in ACT I, which it "abandon[ed]" following Congress' mandate. *Order*, 4 FCC Rod at 487. We direct the Commission, in "redetermin[ing] after a full and fair hearing, \* \* \* the times at which indecent material may be broadcast," to carefully review and address the specific concerns we raised in ACT I: among them, the appropriate definitions of "children" and "reasonable risk" for channeling purposes, the paucity of station- or program-specific audience data expressed as a percentage of the relevant age group population, and the scope of the government's interest in regu-

lating indecent broadcasts. See *ACT I*, 852 F.2d at 1341-44.

For the foregoing reasons, the petition for review is granted, the order under review is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. SPEAKER, I am a realist. If we were to have a separate vote on this amendment, the outcome would be obvious. After all, it is August of an election year, and no one wants to go on record as supporting indecent programming.

The sad fact is that the Byrd amendment will not rid our Nation's airwaves of indecent programming. The courts have seen to that. What the Byrd amendment will do is force the FCC to undertake a lengthy rulemaking proceeding, at taxpayer expense, that is preordained to fail. While I suppose there are certain benefits that accrue to Members of the House and Senate by forcing the agency down this path, we should all be cognizant of the cost and likely outcome.

Mr. SPEAKER, at this point I would like to insert the text of a letter that I received from the American Civil Liberties Union [ACLU] regarding the Byrd amendment. While I am not a member of that association and do not always support its positions, in this case the ACLU analysis is right on point.

AMERICAN CIVIL LIBERTIES UNION,  
Washington, June 12, 1992.

DEAR REPRESENTATIVE: In approving S. 1504, the Public Telecommunications Act, last week, the Senate added an amendment that would prohibit indecent programming on most commercial and public radio and television stations from 6 a.m. to 12 midnight. The amended bill will soon be considered in the House, perhaps as early as Monday. The American Civil Liberties Union urges that this amendment, which violates the First Amendment's guarantees of freedom of speech, be deleted from the bill, as it effectively deprives adults of access to constitutionally protected materials.

Congress has a responsibility not to enact unconstitutional legislation, and this provision is unconstitutional. The Supreme Court has unambiguously declared that "[s]exual expression which is indecent but not obscene is protected by the First Amendment." *Sable Communications v. FCC*, 492 U.S. 115, 126 (1989). Moreover, government cannot restrict access to protected expressive materials under a child-protection theory because "the result is to reduce the adult population \* \* \* to reading what is fit for children." *Id.* at 126, quoting *Butler v. Michigan*, 352 U.S. 310, 383 (1957). The Senate's proposed safe-harbor rule would limit more adult programming to the hours of midnight to 6 a.m., putting the broadcasts off limits to children and most adults alike.

In reviewing a similar restriction on the hours during which indecent programming may be broadcast, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Constitution mandates "reasonable safe harbor rules." *Action for Children's Television v. FCC*, 852 F.2d 1332, 1343 n.18 (D.C. Cir. 1988). Such reasonableness must include "due respect for the high value our Constitution places on freedom and choice in what the people say and hear." *Id.* at 1344. To be constitutional, such a rule "would give effect to the government's interest in promoting pe-

rental supervision of children's listening, without intruding excessively upon the licensee's range of discretion of the fare available for mature audiences and even children whose parents do not wish them sheltered from indecent speech." Id.

By extending the prohibition on indecent programming to midnight, the Senate bill violates these principles by restricting what may be broadcast to hours when most viewers and listeners are asleep and effectively denies adults access to constitutionally protected material. The restriction should be abandoned.

Sincerely,

ROBERT S. PECK,  
Legislative Counsel.

Mr. Speaker, the Senate's acceptance of the Byrd amendment is unfortunate. But it constitutes only a small portion of the bill before us, H.R. 2977. The proper course for the House to follow is to concur in the Senate amendment to H.R. 2977 and clear the bill for the President's signature. I urge my colleagues to join me in supporting this motion and help to ensure that public television and public radio can continue to serve the American public in a manner that informs, enlightens, and entertains them.

Mr. Speaker, I reserve the balance of my time.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the motion to concur in the Senate amendment to H.R. 2977. Last November, this House passed H.R. 2977, the Public Telecommunications Act, with a showing of strong bipartisan support.

Like the House bill, the Senate amendment addresses the authorization levels for the Corporation for Public Broadcasting for fiscal years 1994 through 1996. The Senate amendment authorizes the Corporation at \$310 million for fiscal year 1994, \$375 million for fiscal year 1995, and \$425 million for fiscal year 1996.

I am pleased at the assurances made to the Congress by the Corporation that a significant portion of the appropriated funds will be directed toward educational programs and services, as well as the expansion of radio services.

When the Corporation was first created, Congress specified that the public broadcasting system must receive no more than 40 percent of its money from the Federal Government. In fact, today, our contribution amounts to only 15 percent of its operating expenses.

Most importantly the Senate amendment includes a number of administrative checks to ensure that the Corporation acts in the best interests of its national audience and is accountable for the use of Federal funds. It requires the Corporation to adhere to its statutory objectivity and balance mandate in the distribution of programming grants and report to Congress on its effort to carry out the mandate.

The Senate amendment further requires federally funded programs to be disclosed to the public; it requires the corporation to maintain a public file containing information concerning na-

tional programming; and it requires the independent television service [ITVS] to award its production grants on a geographically diverse basis. Finally, the Senate amendment also seeks to improve the quality of programming on both public and commercial television.

Mr. Speaker, I believe that the Public Telecommunications Act will enable the system to fulfill its commitment to providing much-needed educational and radio expansion services.

Accordingly, I urge my colleagues to support the motion to concur in the Senate amendment.

Mr. Speaker, I reserve the balance of my time.

□ 1300

Mr. DINGELL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Alabama [Mr. HARRIS].

Mr. HARRIS. Mr. Speaker, I am pleased to rise in support of this bill to provide funding for the Corporation for Public Broadcasting and the Public Telecommunications Facilities Program.

Our public broadcasting network provides the American viewing and listening public with diverse and innovative noncommercial programming of the highest quality.

I am particularly interested in the way that public broadcasting is finding new and exciting ways to make telecommunications technology work for us, especially in bringing educational programming to the classrooms of rural America. Educators seem to be among the biggest fans of public television, probably because they have seen first hand this medium's potential.

Last year, Ms. Pam Montgomery from my home State was named a "Teacher of the Year" by President Bush. When I met with Ms. Montgomery after she received her award, she told me that she believed part of her success as a teacher came from the effective use of educational TV in her classroom.

After seeing a videotape of Mrs. Paula Malcolm using "Reading Rainbow" in her classroom at Hill Elementary School in Munford, AL, I have become a believer.

The education potential of public broadcasting is not limited to the formal classroom. As part of the annual Sakura Festival in Tuscaloosa, AL, this spring, children had a chance to learn about the Japanese tradition of kite-building at the children's hands-on museum by watching a "3-2-1 Contact" show on the subject.

These kids learned aerodynamics, Japanese folk culture, and created a kite which is a work of art and now hangs in a place of honor in the lobby of the museum.

Jane Ingram, director of programs of the Children's Hands on Museum, credits Alabama public television's educational services coordinator for making the program available.

Alabama public television has a long-standing commitment to education. I should note that the executive director of APT, Judy Stone, has just been elected to the board of directors of PBS and I am expecting great things from her.

In addition to the services which I just mentioned, APT delivers to the 1.5 million households in Alabama GED exam preparation programs, the learn to read literacy program, and coverage of issues of unique interest to us.

Many of you will remember the exclusive interview of President Jimmy Carter that was produced by the news and public affairs division of APT and which aired on 200 public television stations.

I am particularly pleased to see that the PTFP is reauthorized. It seems to me that as we place greater and greater faith in public broadcasting as an effective tool to help educate the American public with innovative programming, we should provide this medium with adequate infrastructure support.

There are still many rural areas in this country that are not served by public radio and TV and public broadcasting systems that need funds to expand their services and modernize their equipment. Unfortunately, the self-styled "Education President" seroed out this important program and it was left to this Congress to restore its funding.

The bottom line seems to be that investing in our public broadcasting network is one of the most cost-effective methods of ensuring continued educational and informational services to all of our constituents.

Again, I strongly support this bill and I urge my colleagues to do likewise.

Mr. RINALDO. Mr. Speaker, I yield 6 minutes to the gentleman from Pennsylvania [Mr. RITTER], a member of the Committee on Energy and Commerce.

Mr. RITTER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I want to commend the chairman of the full Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL]; the chairman of the Subcommittee on Telecommunications and Finance, [Mr. MARKEY]; the ranking Republican of the Committee on Energy and Commerce, the gentleman from New York [Mr. LEWT]; and the ranking Republican on the Subcommittee on Telecommunications and Finance, the gentleman from New Jersey [Mr. RINALDO], for their work on this issue.

Mr. Speaker, when I stood in the well to address the House on this legislation in November, I expressed some concern as to the objectivity and the balance of some of the programming aired over our public television stations.

I continue to consider objectivity and balance to be the standard by which our public television stations should govern themselves. I am happy to note that this bill, as amended by the Senate, contains the objectivity and bal-

ance provisions for which I have long argued.

I think, Mr. Speaker, this is a much improved bill. The Corporation for Public Broadcasting, through its funding of programming by the Public Broadcasting Service, continues to provide the country with a great variety of entertainment and educational programming. CPB is also at the forefront of technological innovations in merging video presentation and education efforts. They are to be commended.

Let there be no mistake about it. I am a fan of public broadcasting; I am not out to kill "Big Bird." But let us also make no mistake about the fact the concerns I raised were legitimate and deserving of the solution proposed in this bill.

In my opinion, PBS has become too centralized, making programming decisions which serve a very diverse American public without enough input from that viewing public. I firmly believe that input from member stations to PBS central is critical in interpreting and serving the viewing needs of the American consumer. I would like to see, and many of my colleagues would like to see, more of that kind of input.

For example, when PBS distributed shows like "After the Warming," "Global Change," and others that showed public television viewers the alarmist side of global warming, there was not anything on the other side of that coin. "The Greenhouse Conspiracy," which was a critically acclaimed documentary that uses science to virtually take apart a good deal of this alarmist global warming theory, and theories that were the basis for a lot of the PBS programs, was not shown. The reason given was a lack of production values.

Individual stations were forced to procure this program and the balance it represented, if they could, if they could afford it, by themselves.

Science is useful to the extent it constitutes a search for objective truth. Certainly programming on science-based issues should reflect the debate, if there is one, in a scientific community, but it must be based, as all science is, on the isolation of some objective and verifiable fact, not simply the rhetoric of political interest groups, and not the purported facts that they cite for otherwise unsupported positions.

That is when we need objectivity and balance, when there is significant debate over a particular subject.

Mr. Speaker, I want to commend Mr. Bruce Christenson, the president of PBS, for his willingness to engage in what I believe is helpful dialogue with the Congress over this issue and similar ones.

In authorizing the Corporation for Public Broadcasting, Congress mandated that CPB was to "facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are ob-

tained from diverse sources, will be made available to public telecommunications entities with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature."

The Senate amendment before us today provides the way through which those goals can be enforced without the unintended intrusion of Government censorship. The Senate amendment requires that CPB annually report to Congress every organization receiving a grant from CPB, including all programs produced under such grants. The Senate amendment also requires the newly formed independent production service, the independent television service [ITVS], to make annual reports as to its program funding, in order to ensure that programming produced with Federal funds reaches the audience it is intended to reach, and in a manner which maximizes the benefits to that audience.

The Senate amendment further requires CPB to actively expand its efforts to provide objectivity and balance in programming and to report to Congress on these efforts.

Clearly one of the benefits of public broadcasting is its ability to provide objective public affairs programming, offer in-depth coverage and analysis and, to a very large extent, it is successful in doing it. These amendments do not require that specific programs be funded or aired according to a specific schedule, but these amendments are valuable because they require CPB and PBS to focus on balance and objectivity.

Again, this is an improved bill. I am pleased to support it. I urge my colleagues to do the same.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from California [Mr. BEILENSEN].

(Mr. BEILENSEN asked and was given permission to revise and extend his remarks.)

Mr. BEILENSEN. Mr. Speaker, I rise in strong support of H.R. 2977, the bill authorizing reauthorization for public broadcasting.

Mr. Speaker, I rise in strong support of H.R. 2977, the bill reauthorizing the Corporation for Public Broadcasting. Eight months ago, the House of Representatives approved legislation to fund the CPB, which supports noncommercial radio and television services. Now that the Senate has worked its will, I hope we can move this bill forward quickly.

Mr. Speaker, I firmly believe the system we have developed that includes space on the public airwaves for noncommercial, educational uses of television and radio has succeeded and that we should do everything we can to preserve it.

Too many of my constituents have told me how disturbed they are by the quantity and quality of violence on commercial television. I share that concern and was moved by the words of Mr. Newton Minow, a former chairman of the Federal Communications Commission, when he said:

In 1961, I worried that my children would not benefit much from television. But in 1991, I worry that my grandchildren will actually be harmed by it.

He pointed out that the programming on public television has been the answer to that worry, as it struggles to provide outstanding public service while remaining in the role of a perpetual beggar in the richest country in the world.

Mr. Bruce Christenson, the president of the Public Broadcasting Service, has also made the case for public broadcasting very eloquently, calling the public airwaves a:

National resource like . . . public lands. Multiple use of that resource requires public policies that take into account the need for commercial development as well as reserve part of our communications spectrum for public uses just as we preserve national forests and parks.

Mr. Speaker, I ask that my colleagues give H.R. 2977 and public broadcasting their support. I am inserting Mr. Christenson's speech into the RECORD so that my colleagues will have the benefit of his remarks.

THE CASE FOR PUBLIC TELEVISION  
(Remarks of Bruce L. Christenson, President, Public Broadcasting Service (PBS))

Thank you, Gil, and your National Press Club colleagues for inviting me to speak to you this afternoon. It's a pleasure to be here with so many friends and colleagues.

This has been a particularly trying time for those of us who work in public broadcasting. One of my public television colleagues put it this way, "When you're doing the Lord's work, you don't expect to get the hell beaten out of you."

This statement should tell you two things about those of us who work in this institution. First, we are a self-righteous crowd who believe that what we are doing is essential to democracy itself. And second, we are constantly surprised when our assumed virtues turn out to be someone else's blackest sins.

The journalist in the audience should certainly recognize and perhaps even empathize with this experience.

The institution of public television has taken upon itself the responsibility to be E. B. White's definition of a "saving radiance in the sky." Its driving force is public service. It exists to provide a public good to the citizens of this nation.

That's pretty highfalutin stuff. Where do we in public television get that notion?

Like Tevye's response in "Fiddler on the Roof," the idea comes from tradition! And, I might say, it comes from practice.

Public broadcasting pioneers petitioned the FCC in the early fifties for space to be reserved on the public's airwaves for non-commercial, educational uses of television and radio. They succeeded in making the case that, although commercial broadcasting was important, it should not be the only use of the public's airwaves.

These pioneers argued that the only way to adequately care for the public interest in broadcasting was to create a separate non-commercial system of television and radio stations that had education rather than commercial profit as its bottom line.

Their case was based on the premise that commercial broadcasting could not adequately serve two masters—profit and public interest, at least not in the competing commercial network model that evolved in the United States.

These pioneers won the day. Channels were reserved in both the television and the underdeveloped FM radio spectrum for a class of licenses that the Federal Communications

Commission would call, noncommercial, educational radio and television and they have become America's public broadcasting stations.

By any measure these pioneers might apply, public broadcasting has been a success. There are 344 public television stations around the country owned by 176 different licensees. Public radio has more than 800 stations. These public TV and radio stations are owned and operated by community boards, universities, state broadcasting authorities and even local school districts.

More than five million people donate their time, money and professional skills as volunteers, subscribers and local board members, making public broadcasting one of the largest membership organizations in the country.

The public is the source of our strength and we are accountable to them daily for the programs that we air.

Financially, the institution exceeds 1.8 billion dollars in annual revenue with about 17 percent of that amount coming from the federal government.

Most agree that some of the very best children's programs, news and public affairs broadcasts, drama, history, art and music programs appear on public television and public radio. And, more than 100-million people each week use one or more of these services. The answer to the question of whether public broadcasting is a successful and valuable public good is a resounding, "Yes."

The questions we must answer today, however, are different than those asked forty years ago: Do citizens of our nation any longer need a noncommercial, educational broadcasting system? Has technology, as George Will argued, overcome the need for public television? Is the institution off course, pursuing a political agenda, as charged by some in the Congress?

Based on the Senate vote two weeks ago of 84 to 11 in favor of reauthorizing the Corporation for Public Broadcasting for another three years, we might easily say, "Our importance to the American people has been overwhelmingly confirmed."

That is the case, but if a sense of victory is all that we take from this experience then we are missing an extremely important lesson.

The lesson (in the words of another of my colleagues) is that: "For public broadcasting, the era of assumed virtue is over." I would argue that the era of assumed virtue is over for all institutions with "public" in their title, but that's another speech.

What I would like to do today is to accept the premise and make the case for funding public television, outlining for you how we will put technology to work in new ways to serve the public interest through the end of this decade and into the twenty-first century.

Two words continue to define the need for public broadcasting. They are education and noncommercial. The public good offered by this institution lies in its ability to treat the American people as citizens of a nation rather than as consumers in a marketplace. No other commercial radio or television services have as their bottom line the educational value of their program service to the audience served.

"Aha," you say, "You've overlooked those wonderful services on The Discovery and The Learning Channel."

No, I haven't. These channels, like all the others on cable, exist solely to make a profit. If they fail at this objective, they will be replaced.

Those who argue for private goods (in essence the marketplace) to replace public goods, make a profound mistake by assuming the result will somehow be better. We

don't have to look very far to see the difference between marketplace rules and responsible public interest regulation. The Savings and Loan and airline industries could have used less of the former and more of the latter.

To assert absolute marketplace superiority only creates confusion in our ability to even talk about the value of what the Constitution calls "the general welfare." The term welfare itself, for example, is so charged with political rhetoric as to make useful discussion about its meaning to our society impossible.

We have lost the language of public service and adopted marketplace lexicon to describe our social aspirations. I cringe when I hear people talk about education as a product, teachers as service providers, principals and administrators as marketers and managers.

The purpose of education is not to sell goods or services to parents for the benefit of their children. The general welfare of this nation demands that public—not private—attention be paid to the care and nurturing of its most precious resource—the minds of its children.

The same thing has happened in broadcasting. What began as a grand design to serve the public interest, convenience and necessity, found itself (at least as far as television is concerned) portrayed as nothing more than another household appliance—"a toaster with pictures"—was the phrase used by one recent FCC Chairman to describe his view of television and its relationship to our society. This view framed an argument stating that the time for any regulation of the medium had passed and that spectrum value should be determined by the marketplace.

This view would sell the public airwaves to the highest bidder. Buyers then would be free to pursue the highest commercial return for their investment. That's "the American way!"

That is only part of the American way. The other part argues for equity, for bridges in communications policy that serve the needs of all Americans. It argues that the public airwaves are a national resource like its public lands. Multiple use of that resource requires public policies that take into account the need for commercial development as well as reserve part of our communications spectrum for public uses just as we preserve national forests and parks.

Fortunately for the American people, current members of the FCC agree on the need for sound, well-reasoned public policies for the use of the airwaves. The arguments that hold sway, however, are still based primarily on economic models that give only modest recognition to the social consequences of communications policy decisions.

Earlier I said that the terms education and noncommercial define public broadcasting's importance to this society.

Our emphasis on education has led some to charge that public broadcasting is an elitist institution, that it serves only those who are well educated and wealthy. Nothing could be further from the truth. Kevin Kline said it best when he said, "If education is elitist, then public television is elitist." The desire for education occurs at all levels of our society and public television has become an indispensable educational resource.

Right now, local stations serve 30 million elementary students each week and our telecourses are used by two out of three colleges. We're training teachers in how to use science programming in the classroom and delivering advance high school courses to students in 23 states via satellite.

But, let me tell you where we are going. We are developing plans to launch a math channel for teachers, parents and students and hope to have it ready in 1994. We are con-

necting high school students across the country in an electronic debate of national election issues this fall.

In December of 1993, when we move to a new satellite delivery system, public television will have the capacity to send as many as fifty-five different channels of video and over 200 channels of CD-quality audio to our stations as well as to the schools, workplaces and homes of this nation.

The educational capacity of public television will take a giant leap forward in the middle of this decade, adding two-way interactive facilities. America will have an educational technology capability second to none in the world.

Ours is the challenge to wisely use this capacity to teach—to make the knowledge of past generations available to every individual who seeks it. Because, in addition to using the words noncommercial and educational to define public broadcasting's value to our society, we must add the terms universal access and quality.

Universal access stands for two things. First, regardless of ability to pay, everyone should have access to the finest of humankind's knowledge and experience through the choice to tuning to a particular channel on the dial.

Second, that those who have something to say to their fellow citizens can get reasonable access to today's forum for such conversations. The creators of public broadcasting saw it as the venue for such dialogue.

Beyond accessibility is the basic issue of staying in touch with each other. As audiences continue to be splintered into niches for sports, comedy, movies and cartoons, only public television offers a unifying hearth to examine our culture as a whole. This is fundamental to our mission, and I believe it's fundamental to the continued vigor of this experiment in democracy.

The concept of universal access in public broadcasting embodies the dual right of equitable service to all the people; and the responsibility to offer opinions and points of view generally ignored on television and radio. To do so means that we sometimes create waves. And, I suppose that is inevitable.

For some of our critics, even the right of universal access is questionable. Like Marie Antoinette when speaking of another commodity in public demand, they respond, "let them buy cable."

The fact that cable is unavailable or unaffordable in forty-per cent of American homes carries no weight with folks at the Heritage Foundation who see all things as a matter of economic choice.

Other critics object to public broadcasting's role as presenter of ideas, visions and discussion that vary from the mainstream offerings of commercial television. For them we appear to be a vehicle for ideology.

Others argue that those in the heartland of this great nation shouldn't be forced to watch programs that are geared to major metropolitan regions of the country. The creators of public broadcasting devised an ingenious answer to questions about "What's appropriate for my community?"

They structured the institution to leave the ultimate choice to local communities themselves. No one in public broadcasting can force any station to air a program that the station doesn't believe meets its community standards.

FBS makes decisions about programs in the national schedule. In ninety-nine percent of the cases stations all across the country accept and air the programs selected. Occasionally, a particular program is judged by an individual station, not to fit the viewing standards of its community. Their judgment

prevails. Local station control and responsibility for what airs in their community is the foundation of accountability in public television.

Complaints of bias about a small number of programs have come from the far left as well as from the right.

The left contends that public broadcasting has been captured by the established business interests of this nation. They give as evidence the numbers of programs on business and commercial topics as well as the choice of guests and presenters on news programs like the MacNeil/Lehrer NewsHour.

Most of the arguments from the right portray public television as captive of the "liberal left." Political documentaries and some cultural programming addressing homosexual themes have been roundly criticized as being unworthy of taxpayer support.

I am astonished how absurd this argument sounds when it is made against other public funded activities. No one ever asks how many taxpayers want to pay the salaries of policemen who beat up the people they arrest. Nowhere among the solutions to the problem identified is elimination of funding for the police force.

When the Supreme Court hands down a decision with which many taxpayers, perhaps even a majority, disagree, no one suggests that the court's funding authorization and appropriations be reduced.

Neither should eliminating public financing for our arts or public broadcasting institutions be the solution of first choice when addressing their perceived problems.

It was to the assertions of bias that CPB Board Chairman Sheila Tate responded in her speech last week in San Francisco at public television's annual meeting. She promised (and I join her and support the CPB Board's efforts) to address any perceived or real bias in public broadcasting's programs.

As in all things political, self interest will have to be carefully weighed by CPB in its evaluation of those who charge that such bias exists. And, those of us in public broadcasting must openly listen to and act on suggestions to improve the quality of our service to the American people.

CPB's board of directors must certify that our institution is acting in the public interest. And, together with our viewers and listeners, they must affirm our continued merit of federal support. That support is essential if we are to maintain the noncommercial, educational nature of our services in the decades to come.

Our unique base of federal, state, business and individual member support creates a unique mix of funding sources that sustain this institution. This mix gives us editorial independence from any single funding source, while making the contributions of each essential in our ability to offer the range and quality of services we provide each day.

Tight financial times put a greater burden on those in the public sector to clearly articulate the value of their institutions to those whose support they seek.

The case for public television includes its role as the nation's story teller, creating the national shared experience of reliving America's CIVIL WAR one hundred and thirty years after it happened.

The case for public television includes that of being teacher to millions of children and adults each week, helping them learn everything from their ABC's to Japanese to Probability Statistics to the natural wonders of the universe.

The case of public television includes that of provocateur: asking viewers to face ethical, political and moral dilemmas of such profound complexity that the only way to escape, as Fred Friendly says, is-by thinking.

The case for public television includes that of being America's town square, where voices and visions ignored elsewhere in the medium can be seen, evaluated and judged. If found wanting, dismissed, but not for lack of a platform. Free speech only has meaning in a democracy if the right for all voices to be heard in the most powerful medium of our age is continually affirmed.

The case for public broadcasting rests on the American concept of citizenship, of providing equal opportunity and access to the richness of our cultural, artistic, philosophical and religious heritage.

From its structure to its mission of public service, the case for public broadcasting continues as strong and as bright today as it was forty years ago when our founding pioneers first petitioned to create noncommercial, educational radio and television services to meet the intellectual, artistic and spiritual needs of this nation.

The American people have a right see and hear noncommercial, educational broadcasting services. They also have the responsibility to secure the blessings of those services for themselves and for their posterity.

Like I said at the beginning, that's pretty highfalutin stuff.

The marvelous thing about it for those of us who work in public broadcasting is that it's all true. Public service is the driving force at PBS. Our agenda is to provide those television services that are essential to this society for its democratic well being. We couldn't ask for a better or more challenging job.

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Mr. RINALDO. Mr. Speaker, I yield 2½ minutes to the gentleman from California [Mr. ROHRBACHER].

Mr. ROHRBACHER. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in opposition to the motion.

Mr. Speaker, when this House voted nearly 2 months ago against a balanced budget amendment to the Constitution, many in opposition insisted that Congress can exercise self-control and reduce spending.

Today, those who insisted that they can control their voracious appetites for our tax dollars have an opportunity to put our money where their mouths are.

We are discussing a \$1.1 billion 3-year authorization for what we must admit is a frill. This program is not vital to our national well-being, it does not feed hungry children, it does not expand economic growth, it does not uncover a cure for cancer; most assuredly it does absolutely nothing to reduce our uncontrolled \$400 billion annual deficit or to reduce our nearly \$4 trillion dollar national debt.

Funding this program is especially wrong because it is not something that only Government can do, or even something that Government does best. Public broadcasting has been made obsolete by the proliferation of cable which makes channels available for local access and educational programming, not to mention arts and entertainment, all of which fills the niche created by taxpayer-subsidized public broadcasting. Technology makes public broadcasting no longer necessary.

The only difference between for-profit cable, broadcast networks, and public broadcasting is that the private companies respond to consumer demand and competition. The private alternatives are competitive and they produce a broad range of quality programming at a profit. This programming would be actually broader if public broadcasting would go out of business and they would take up some of the better programs that are now subsidized by the taxpayers. Unfortunately we are being asked to fund a 37-percent increase for a federally subsidized alternative to profitable cable television, as well as video tapes, and other electronic alternatives.

With the collapse of communism, much has been done to reeducate people in the former Soviet bloc. We could learn from their experience that State-sponsored corporations and industries are not in the interest of a society. How ironic if we prevailed over socialism overseas only to be bankrupted by it at home, because no one in this body is willing to cut any Government program whatsoever, even one that is a service that can be provided by the private sector.

So now is the time for this body to demonstrate its ability to keep its word to the American public. We have been challenged to stop needless spending; this is a defining moment. We said we did not need a balanced budget amendment to do it. Let us do it now. Let us begin the long trek back to fiscal sanity by cutting at least this chunk of unnecessary spending that is not absolutely necessary.

The Federal Government is going broke, and we are going to spend another billion taxpayer dollars on subsidizing information and entertainment? Give me a break. Vote against this bill.

Mr. MARKEY. Mr. Speaker, I rise in strong support of H.R. 2977, the Public Telecommunications Act of 1991. This legislation, which originally passed the House last November, authorizes the appropriation of funds for the Corporation for Public Broadcasting [CPB] for fiscal years 1994 through 1996. This legislation will ensure that the public broadcasting system can continue to serve Americans with high quality, diverse, and innovative programming, community service, and technological innovation.

Since its inception in 1967, CPB and the public broadcasting community has succeeded in developing programming that challenges the hearts and minds of Americans of all ages and walks of life. But public broadcasters have not limited their efforts to creating and airing innovative programming. Public broadcasters have achieved excellence in numerous areas. They have pioneered technological developments, initiated community outreach and educational projects, widened communications access for disabled Americans, and enhanced and extended public broadcasting to unserved and underserved audiences. Looking toward the future, public broadcasters have pledged to use their technological and programming expertise for enhanced educational projects and expansion of radio service.

The funds authorized by this bill will provide the public broadcasting system with the resources critical to the achievement of these goals. The legislation authorizes CPB appropriations of \$310 million for fiscal year 1994, \$375 million for fiscal year 1995, and \$425 million for fiscal year 1996. The bill also authorizes continued funding of the Public Telecommunications Facilities Program [PTFP] at \$42 million for each of fiscal years 1992, 1993, and 1994. PTFP's grant funds will enable public television and radio broadcasters to reach areas not already served and to maintain and modernize existing facilities. The bill also expands the role of PTFP in broadening access to telecommunications services of underserved audiences, including deaf and hearing impaired and blind and visually impaired people.

In addition, the bill includes provisions to increase the managerial efficiency of the CPB Board; to enhance reporting requirements for CPB and the Independent Television Service; to clarify that the Children's Television Act of 1990 applies to both commercial and non-commercial broadcasters; to improve the EEO performance of public broadcasting stations; and to enable CPB to fund affordable training programs.

The bill we are considering today also incorporates several provisions adopted by the Senate last month. These changes, which reflect the development of a bipartisan approach to these issues, will improve CPB's ability to serve the public.

First, in a new provision, the bill clarifies the existing statutory mandate of the CPB Board to facilitate the development of high quality, diverse, innovative, and creative programming that also is objective and balanced. Specifically, the bill requires the CPB Board to give the public the opportunity to comment on programming, to review national programming on a regular basis with an eye toward identifying needs not met by such programming, to take steps the CPB deems appropriate to meet its responsibilities regarding grant awards for national programming, and to report to Congress and public broadcasting stations on its efforts in that area. By facilitating citizen comment and reaction to public television and radio programming, this review process will strengthen the public broadcasting system. It will enable CPB to address unmet needs and unexposed points of view more efficiently and make it more responsive to its audience.

A second new provision requires CPB to maintain a public file that contains information concerning the funds given out by CPB and the Independent Television Service for the production of national programming. This requirement will facilitate public access to information on CPB, without jeopardizing its independence in carrying out its mandated responsibilities. Much of the information that will appear in CPB's public file already is collected and available. This provision merely centralizes it and promotes greater public access and accountability.

Other new provisions in the bill will promote public broadcasting's participation in new educational telecommunications initiatives. Specifically, the bill requires CPB to prepare reports on the most effective way to establish and implement a ready-to-learn public television channel and to use telecommunications facilities for distance learning projects in rural areas.

Finally, this legislation includes new provisions that impose a ban on indecent programming on broadcast television and radio between the hours of 6 a.m. and 12 midnight; that require CPB to expand the text of the identification that follows programs funded by CPB; that require ITVS, to the maximum extent practicable, to award grants to recipients representing the widest possible geographic distribution; and that permit CPB Board members to sit until their successor is confirmed or for the remainder of the calendar year.

Mr. Speaker, this legislation is a consensus package that permits CPB and public broadcasters to continue to provide exceptional programming and services to the American people. I want to thank the full committee chairman, Mr. DINGELL, for his continuing guidance and support in this area, and the ranking Republican member of the subcommittee, Mr. RINALDO, for his hard work and cooperation on this legislation. Further, I want to acknowledge the helpful efforts of the public broadcasting community, including among others, the Corporation for Public Broadcasting, America's Public Television Stations, and National Public Radio.

I urge my colleagues to support this important legislation so that the President may give it his immediate consideration.

Mr. McMILLEN of Maryland. I'm pleased to support the reauthorization of funding for the Corporation for Public Broadcasting for fiscal years 1994-96, and congratulate Chairman MARKEY for his efforts on this legislation.

Public television provides a truly unique service to the public, and remains an important source of educational, cultural and public affairs programming for the Nation. It has also proven extremely effective in serving the public interest.

Unlike commercial broadcasting, public broadcasting can operate without being tied to the dictates of program ratings. The buffer from such forces has a demonstrated record, one which has been crucial in maintaining diversity and program quality.

The educational impact of the CPB extends far beyond "Sesame Street." For example, it provides college courses—broadcast daily—for which adults can receive credit. This addition to the high-quality entertainment for which public broadcasting is so well-known.

Maryland's public television service provides an excellent example of such educational investments. MPT's "College of the Air" has helped tens of thousands of students gain credit toward their degrees through telecourses. By working with numerous institutions of higher learning in our region, it is one of the most successful programs in the Nation.

For more than 20 years, Maryland Public Television [MPT] has provided excellent service to the citizens of my district and State. MPT proves how the Federal, State, and private funds that support public broadcasting benefit our citizens.

We, in Maryland, are proud of the achievements of our public television, and the benefits it provides. The problems raised in the other body by a handful of individuals has been troubling to me, but I am pleased that an agreement satisfactory to all concerned was able to be worked out. The representatives of CPB and America's public TV stations are to be commended for their efforts in securing this agreement.

Again, I commend the chairman on this legislation, and urge my colleagues to support reauthorization legislation.

Mr. SWIFT. Mr. Speaker, I would like to address in particular one important provision of this legislation as the significance of it may have escaped the attention of the Members.

For the first time in 14 years, we are amending in the 1934 Communications Act the declaration of policy which describes the goals and states the purpose of the Corporation for Public Broadcasting. Through the declaration, we are amending and expanding the CPB's underlying mandate in a significant way by stating—

It is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies.

What we are doing in this provision is planning for the future. We are clearly on the edge of a number of exciting and challenging breakthroughs in communication technologies. In particular, digital compression and improved satellite broadcast technology should make multi-channel, direct-to-the-home satellite broadcast service [DBS] a strong competitor to existing cable systems within the next few years.

DBS will almost certainly be a national or regional broadcast service. And it will therefore be difficult to reconcile our traditional concept of localism, of local broadcasters holding up a mirror to reflect the needs and aspirations of their local community, with this new technology. But the DBS technology will serve very well to reach diverse communities of interest—that may be dispersed geographically—but have common interests, needs, and concerns.

It is these dispersed communities, whether they are ethnic communities, cultural communities, or others with common interests or educational needs, that can be well-served in the aggregate where on a purely local level their needs would not likely be served by local broadcasters or cable companies.

In the cable bill that the House just passed, there is a provision that I sponsored which requires that DBS operators reserve—at no more than the direct cost of transmitting the signals—4 to 7 percent of their capacity for noncommercial use. That noncommercial set-aside is to be used by public telecommunications entities and educational institutions to serve the public needs, including those communities of interest that may be underserved by existing over-the-air broadcasting.

I commend the authors of this legislation for including this statement of public policy; that the public has the right to noncommercial programming that reflects their needs and concerns—as individuals and as members of communities of common interests. To extend this public right to new communications technologies as they come on line is a most appropriate extension of the goals of the 1934 Communications Act of an informed citizenry and the universal availability of information.

Mr. SCHEUER. Mr. Speaker, I rise in strong support of this reauthorization bill.

Mr. Speaker, this reauthorization recognizes that public broadcasting is an invaluable resource for all Americans, but particularly for our children.

Mr. Speaker, American children watch an average of between 4 and 8 hours of television every day. Given this fact, it is crucial that these children have an attractive alternative to violent programming, sports, and cartoons. CPB-funded programs such as "Reading Rainbow" and "Sesame Street" fill that niche. These programs are really after-school education, and they contribute to the development of brilliant young minds across our country. This reauthorization will allow public broadcasting to expand its educational program hours and stay on the cutting edge of program quality.

This authorization will also foster the public broadcasting community's partnership with our Nation's schools and universities. In addition to the programs which run on public television and radio stations, CPB has funded innovative instructional on video tapes and laser discs for classroom use. WNET—channel 13—an outstanding public television station in New York City, has established a summer institute program which trains teachers to use these public broadcasting tools as a supplement to their daily lessons.

CPB and public broadcasters have also used satellite-delivery technology to bring their programming into the American classroom. Mr. Speaker, this innovation breaks down the traditional barriers of geography and income, enabling all American students to learn foreign languages, study current events, or prepare for advanced placement exams through interactive programming. With our support these types of programs will flourish, and assist us in our mission to improve American schools and universities.

Excellent educational programming exists on cable television—Arts & Entertainment, the Discovery channel. However, public broadcasting is the only free, over-the-air source with a congressional mandate to serve the public. It reaches all Americans, regardless of income or geography, with programming of superb quality—quality which is rarely equaled by over-the-air broadcast TV.

For a quarter-century, the public broadcasting community has produced the finest programming on television and radio—programs such as "The Civil War," "Nova," "Washington Week in Review," and "The American Experience." This authorization recognizes these achievements, and paves the way for future successes. I urge my colleagues to support this legislation.

Mr. RICHARDSON. Mr. Speaker, just over a year ago, the House Telecommunications Subcommittee, began its work to pass a reauthorization bill for the Corporation for Public Broadcasting [CPB]. Today, I believe we have a final product that will strengthen and expand a public broadcasting system enjoyed by millions of Americans in their homes and in their schools.

Today, Congress will do its part: Make a financial commitment of \$1.1 billion to public broadcasting over the next 3 fiscal years 1994–96. I strongly believe, and the Telecommunications Subcommittee has clearly stated, that the public broadcasting community needs to match this financial commitment with a commitment of its own to expand service and resources to stations serving rural and minority audiences.

I want to commend the Corporation for Public Broadcasting [CPB] and the public radio community for undertaking a thorough review

of all its radio grant programs. I appreciate the time and effort made by both CPB and National Public Radio [NPR] to see that my concerns about committing additional resources to rural and minority stations have been addressed.

The recommendations made by CPB's radio advisory committee will ensure that a significant portion of the increased funding provided to CPB under H.R. 2977 will be used for reaching underserved and unserved public radio audiences.

CPB's plans are to continue successful expansion grant programs, step, program acquisition, and sole service grants, increase funds to existing rural and minority sole-service stations, and provide additional funds for extending signals to hard-to-reach areas. The investment in these programs for fiscal year 1994 will be \$5.7 million—more than the entire increase allocated to public radio for that year. I am pleased that the public radio community has made good on its personal commitment to me on these issues.

Specifically, CPB's program will: increase the size of CPB grants for stations operating in exceptionally rural communities and for stations serving minority audiences; extend the reach of public radio programming by providing grants specifically for acquisition of national radio programming for satellite interconnected stations not currently receiving CPB support; and create a fund for stations extending their service to otherwise unserved listeners via repeaters, translators, and boosters.

Mr. Speaker, these initiatives are very important, and they will strengthen the Nation's public radio system. I look forward to the completion of CPB's review of its television grant programs, which is now underway, and hope that its recommendations will address many of these same issues.

I would urge my colleagues to support this bill. An aggressive Federal commitment to public broadcasting is needed now more than ever before. H.R. 2977 deserves the enthusiastic support of the full House.

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to House Resolution 535, the previous question is ordered on the motion.

The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL].

The motion was agreed to.

A motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter on H.R. 2977, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

#### PROVIDING FOR CONSIDERATION OF H.R. 2782, PROVIDING ERISA DOES NOT PREEMPT CERTAIN STATE LAWS

Mr. BEILENSEN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 536 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 536

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2782) to amend the Employee Retirement Income Security Act of 1974 to provide that such Act does not preempt certain State laws, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be considered for amendment under the five-minute rule. Consideration of the bill, and amendments thereto, shall not exceed four hours. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from California [Mr. BEILENSEN] is recognized for 1 hour.

Mr. BEILENSEN. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. DREIER], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 536 is the rule providing for consideration of H.R. 2782, which would amend the Employee Retirement and Income Security Act of 1974 to provide that the act does not preempt certain State laws.

This in an open rule, providing for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor.

In addition to the 1 hour of general debate, the rule limits the time for consideration of the bill for amendment to 4 hours.

The Committee on Rules felt, after hearing testimony, that this restriction gives a fair and reasonable amount of time for a bill to which no amendments were offered in the subcommittee or the full committee, and especially since, as we all know well, we have a very limited amount of time before the end of the session to complete work on a large number of bills.

Finally, Mr. Speaker, the resolution provides for one motion to recommit.

Mr. Speaker, H.R. 2782 amends the Employee Retirement Security Act—popularly known as ERISA—to clarify that State laws in three specific areas